United States Court of Appeals
for the Second Circuit

APPENDIX

77-1150

B
P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,
Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
MAY 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume 1—Pages A-1 to A-680

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TABLE OF CONTENTS

PAGE

Relevant Docket Entries A-1
Indictment. A-10
Judgment. A-37
Trial Transcript. A-44
Government's Opening Statement. A-156
Defendants Henry L. Hoffman and
Howard Friedman's Opening Statement. A-207
Defendants AMREP Corporation and ATC
Realty Corporation's Opening Statement . . . A-237
Defendant Irving Blum's Opening Statement A-244
Defendant Herman Oberman's Opening Statement. . . A-246
Defendant Solomon Friend's Opening Statement. . . A-249
Defendants Daniel Friedman and Chester
Carity's Opening Statement A-270

Witnesses for Government:

Berit Hampe:
- Direct A-295
- Cross. A-365
- Redirect A-401
- Recross. A-404

Helen Henry:
- Direct A-405
- Cross. A-472
- Redirect A-635

Theodore R. Schreier:
- Direct A-652

Howard Mandel:
- Direct A-749
- Cross. A-1065
- Redirect A-1112

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PAGE

Peter Olguin:
Direct A-5133
Cross A-5158
Redirect A-5181

Ronald A. Williams:
Direct A-5187
Cross A-5288
Redirect A-5301

Samuel A. Kaufman:
Direct A-5316
Cross A-5329
Redirect A-5358

Geneva Clymer:
Direct A-5358
Cross A-5387
Redirect A-5410

Charles H. Clymer:
Direct A-5411
Cross A-5423
Redirect A-5428

John F. Sporzynski:
Direct A-5477
Cross A-5508
Redirect A-5576

Jack Borden:
Direct A-5662
Cross A-5683

Richard B. Gray:
Direct A-5708
Cross A-5812
Redirect A-5865

Antonio Reyes-Suarez:
Direct A-5870
Cross A-5883
Redirect A-5938

PAGE

Witnesses for Defense:

Dick Kent:
Direct A-6268
Cross. A-6286
Redirect A-6293
Recross. A-6294

Tomas William Bennett:
Direct A-6295

John B. Kearney:
Direct A-6323
Cross. A-6343
Redirect A-6417

Raymond Frappier:
Direct A-6422
Cross. A-6437
Redirect A-6458

Hugh J. Graham:
Direct A-6469
Cross. A-6501
Redirect A-6545
Redirect resumed A-6895

Reverend John B. Rupley:
Direct A-6581
Cross. A-6605
Redirect A-6641

Joyce Davis:
Direct A-6659
Cross. A-6689

Reverend E. Scott Byers:
Direct A-6730
Cross. A-6745
Redirect A-6752

Marion Quinn:
Direct A-6754
Cross. A-6772
Redirect A-6782

PAGE

Grete Vives:
    Direct A-6785
    Cross. A-6805
    Redirect A-6831

Grover E. Nash:
    Direct A-6836
    Cross. A-6845
    Redirect A-6855
    Recross. A-6857

Ruth Linderman:
    Direct A-6859
    Cross. A-6874

Ruth V. Mellenbrook:
    Direct A-6898
    Cross. A-6929

Jose Luis Yguado:
    Direct A-6941
    Cross. A-7007
    Redirect A-7156
    Recross. A-7203
    Direct resumed A-7278
    Cross. A-7290

Government's Summation. A-7505
Defendant Howard Friedman's Summation A-7626
Defendant Henry L. Hoffman's Summation. A-7733
Defendants AMREP Corporation and ATC
    Realty Corporation's Summation A-7750
Defendant Rio Rancho Estates' Summation A-7767
Defendants Daniel Friedman and Chester
    Carity's Summation A-7793
Government's Rebuttal Summation A-7891
Court's Charge to Jury. A-7960
Defendants' Requests to Charge. A-8197
Government's Requests to Charge A-8271
Minutes of Sentence A-8357
Indictment 75 Cr. 1023. . . . . A-8397
Defendant AMREP Corporation's Notice
    of Motion to Sever Defendant Friend. A-8439
Motion Pursuant to Rule 14. . . . . A-8440
Gallantz Affidavit in Support A-8441
Winslow Affidavit in Support. A-8452
Memorandum in Support A-8459
Reply Memorandum in Support of Motion
    by Defendant AMREP Corporation to
    Sever Solomon H. Friend. A-8488

PAGE

Friend Notice of Motion to Dismiss or Sever. A-8496
Friend Affidavit in Support. A-8499

I. Parker's Affidavit A-8502

Friend Notice of Motion to Sever A-8504
Glendon Affidavit in Support of Motion for Severance A-8506
Arkin Affidavit in Support A-8531
E.B. Winslow Affidavit in Support. A-8536
Memorandum of Defendant Solomon H. Friend in Support of Motion to Sever A-8543
Friend Memorandum in Support of Motion to Dismiss. A-8583
Friend Memorandum in Support of Motion to Strike A-8601
Friend Reply Memorandum in Support of Motion to Sever A-8616
Friend Reply Affidavit in Support of Motion to Sever . . . .
Friend Reply Affidavit in Support of Motion to Sever A-8628
Arkin Reply Affidavit in Support A-8631
Schreier Affidavit in Support. A-8633
Glendon Reply Affidavit in Support of Defendant Friend's Motion to Sever. A-8634
Winslow Affidavit in Support of Defendant Friend's Motion to Sever. A-8637
Montoya Affidavit in Support of Defendant Friend's Motion to Sever. A-8639
Bertoch Affidavit in Support of Defendant Friend's Motion to Sever. A-8641
Mori Affidavit in Support of the Motion by Soloman H. Friend for a Severance A-8643
Greene Affidavit in Support of the Motion by Solomon H. Friend for a Severance A-8645

PAGE

Lilley Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8647
Schreier Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8649
Parkoff Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8651
Bastone Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8653
Waldman Affidavit in Support of the Motion by Solomon H. Friend for a Severance. A-8655
Carity and Friedman Notice of Motion for Dismissal of the Indictment, Suppression of Evidence, and Severance of Defendant Friend A-8657
Fleming Affidavit in Support of Motion to Dismiss, Suppress Evidence and Sever a Co-defendant. A-8659
Memorandum in Support. A-8686
Carity and Daniel Friedman Reply Memorandum in Support of Their Motions to Dismiss and Sever. A-8713
Defendants Hoffman and Howard Friedman Notice of Motions A-8726
Defendants Howard W. Friedman and Henry L. Hoffmans' Motions. A-8729
Arkin Affidavit in Support of Defendants' Motions A-8730
Arisohn Affidavit in Support of Defendants' Motion for an in camera Inspection of the Grand Jury Minutes. . . . A-8750
Winslow Affidavit in Support of the Motion of Defendants Howard W. Friedman and Henry L. Hoffman to Dismiss. A-8756
Memorandum of Law in Support of Motions made by Defendants Howard W. Friedman and Henry L. Hoffman. A-8863

PAGE

Reply Memorandum in Support of the Motions of Defendants Howard W. Friedman and Henry L. Hoffman for a Dismissal of the Indictment and an in camera inspection of the Grand Jury Minutes. A-8930

Governments' Table of Authorities. A-8946

Government's Memorandum of Law in Opposition to Defendants' Non-Discovery Motions A-8975

Hynes Affidavit in Opposition to Defendants' Motions. A-9157
Affidavit of Alan J. Kappeler. A-9171
Defendant Friend's Notice of Motion. A-9200
Defendant Friend's Notice of Motion. A-9202
Friend Affidavit in Support of Motion for Reconsideration of Motion for a Severance A-9205
Glendon Affidavit Submitted in Connection with the Annexed Motion. A-9210
Friend Memorandum in Support of Motion for Reargument A-9212
Government's Memorandum of Law in Opposition to Defendant Friend's Renewed Motions for Severance and Dismissal and the Motion of Friend and Rogers and Wells to Permit Rogers and Wells to Withdraw from the case. A-9219
Friend Reply Affidavit A-9227
Arkin Affidavit in Connection with the Renewed Motion of Defendant Friend. A-9233
Gallantz Affidavit in Joining the Renewed Motion for a Severance of Friend A-9236
Lavinsky Affidavit on Renewed Motion for Severance. A-9237
Order to Show Cause for Severance. A-9255

PAGE

Glendon Affidavit in Support of Renewed Motion to Sever A-9257
Friend Memorandum in Support of Renewed Motion to Sever A-9279
Friend Memorandum in Support of Motion for Acquittal, or, Alternatively, for Severance A-9311
Friend Memorandum in Support of his Objection to Admission of Evidence concerning Grand Jury Production of GX66 . . . . A-9361
Lavinsky Affidavit in Opposition to Offer of Grand Jury Testimony of Defendant Friend A-9366
Lavinsky Supplemental Affidavit in Opposition to Offer of Grand Jury Testimony of Friend A-9378
Memorandum in Opposition to the Introduction of the Grand Jury Testimony of Friend in a Joint Trial A-9390
Arkin Affidavit in Opposition A-9405
Objections of Defendants Carity and Daniel Friedman to Prosecution's Further Offer of Friend's Grand Jury Testimony A-9408
Objections of Defendants Carity and Daniel Friedman to Offer of Defendant Friend's Grand Jury Testimony A-9409
Friend Supplemental Objections to Designation of Grand Jury Testimony A-9410
Friend Supplemental Memorandum in Support of Objections to Government Designation of Grand Jury Testimony A-9414
Government's Memorandum of Law in Support of the Admissibility of the Defendant Friend's Grand Jury Testimony A-9420
Arkin Affidavit dated 10/18/76 . . . . A-9451
Friend Supplemental Memorandum in Support of Objections to Government Designation of Grand Jury Testimony A-9454
Friend Reply Memorandum in Support of Objections A-9460
Memorandum of Corporate Defendants Objections to Friend Grand Jury Testimony A-9466

PAGE

Friend Reply Memorandum in Support of Objections A-9468
Weidner Affidavit of Service A-9474
Per Curiam Decision of Second Circuit Court of Appeals A-9475
Friend Objections to Grand Jury Excerpts Designated by the Government for Offer into Evidence A-9487
AMREP Corporation's Objections to the Proffered Grand Jury Testimony of Solomon H. Friend A-9495
Government Response to AMREP's Objections to Friend's Grand Jury Testimony A9504
Friend Amendment to Objections to Grand Jury Excerpts A-9509
Friend Reply Memorandum Relating to Designated Excerpts A-9511
Government Response to Friend's Objections to the Designated Portions of Friend's Grand Jury Testimony A-9519
Notice of Motion A-9527
Arkin Affidavit in Support of Howard Friedman and Hoffman Applications to Sever their Trial from that of the Corporate Defendants A-9528
Memorandum of Law A-9530
Order of The United States Court of Appeals for the Second Circuit on Oct. 26, 1976 . . . . A-9542
Government Memorandum A-9543
Government's Evidence Memorandum on Proof of Misleading Statements in a Mail Fraud Scheme A-9545
Government Memorandum on Defendants' Knowledge of State Disclaimers A-9551
June 30, 1976 - Order Metzner, J. A-9561
July 23, 1976 - Order Metzner, J. A-9564
September 17, 1976 - Order Metzner, J. A-9570
September 17, 1976 - Order Metzner, J. A-9579
October 27, 1976 - Order Metzner, J. A-9581
November 1, 1976 - Order Metzner, J. A-9584
December 30, 1976 - Order Metzner, J. A-9587

PAGE

Government's Trial Brief pp. 10-22 . . . . A-9589
December 30, 1976 - Order Metzner, J. A-9602
Letter from Edward B. inslow dated March 3, 1977 . . . . A-9604
Carity and Daniel Frie man Memorandum In Support of Post Trial Motions A-9608a

Relevant Docket Entries Under Rule 30(a)

10-28-75	Filed indictment (75 Cr. 1023)
11-10-75	Deft. AMREP CORPORATION pleads not guilty thru atty Stanley Arkin (authorized to enter plea on behalf of the corporation.
	Deft. Rio Rancho Estates Inc. Pleads not guilty thru atty. Stanley Arkin (authorized to enter plea on behalf of the Corporation.
	Deft. ATC Realty Corporation Pleads not guilty thru atty. Stanley Arkin (authorized to enter plea on behalf of the Corporation.
	Deft. Howard W. Friedman (atty. present) Pleads not guilty. To surrender passport to AUSA (Hynes) Ordered photographed and fingerprinted. Deft. R.O.R.
	Deft. Chester Carity (atty. present) Pleads not guilty. Ordered photographed and fingerprinted. R.O.R.
	Deft. Henry L. Hoffman (atty. present) Pleads not guilty. Ordered photographed and fingerprinted. Deft. R.O.R.
	Deft. Daniel Friedman (atty. present) Pleads not guilty. Ordered photographed and fingerprinted. Deft. R.O.R.

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Rio Rancho Estates - Deft. (atty. present) The IMPOSITION OF SENTENCE is SUSPENDED on each of counts [illegible] & 78. . .Metzner, J. . . Copies issued.

ABC Realty Corporation - Deft. (atty. present) The IMPOSITION OF SENTENCE is SUSPENDED on each of counts [illegible] & 78 . . . Metzner, J. . . Copies issued.

Howard B. Friedman - The deft. is hereby committed to the custody of the Aty General or his authorized representative for imprisonment for a period of SIX (6) MONTHS on each of counts [illegible] and 78 to run concurrently with each other. The deft. is continued R.O.R. pending appeal. . .Metzner, J. Copies issued.

Chester Cole, Jr. - The deft. is hereby committed to the custody of the Aty General or his authorized representative for imprisonment for a period of SIX (6) MONTHS on each of counts [illegible] and 78 to run concurrently with each other. The deft. is continued R.O.R. pending appeal. . .Metzner, J. Copies issued.

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Henry L. Hoffman - The deft. is hereby committed to the custody of the Aty General or his authorized representative for imprisonment for a period of SIX (6) MONTHS on each of counts 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79 to run concurrently with each other. The deft. is continued R.O.R. pending appeal...Metzner, J. Copies issued.

Daniel Friedman - The deft. is hereby committed to the custody of the Aty General or his authorized representative for imprisonment for a period of SIX (6) MONTHS on each of counts 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79 to run concurrently with each other. The deft. is continued R.O.R. pending appeal...Metzner, J. Copies issued.

3-18-77 Filed deft. AMREP Corporation Notice of Appeal from Judgment filed on 3-10-77. Mailed copies.

Filed deft. Rio Rancho Estates' Notice of Appeal from Judgment filed on 3-10-77. Mailed copies.

Filed deft. ATC Realty Corporation's Notice of Appeal from Judgment filed on 3-10-77. Mailed copies.

Filed deft. Howard W. Friedman's Notice of Appeal from Judgment filed on 3-10-77. Mailed copies.

Filed deft. Chester Carity's Notice of Appeal from Judgment filed on 3-10-77. Mailed copies.

Filed deft. Henry L. Hoffman's Notice of Appeal from Judgment filed on 3-10-77. Mailed copies.

Filed deft. Daniel Friedman's Notice of Appeal from Judgment filed on 3-10-77. Mailed copies.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA :

- v - : **INDICTMENT**

AMREP CORPORATION, : S 76 Cr.
RIO RANCHO ESTATES, INC.,
ATC REALTY CORPORATION, :
HOWARD W. FRIEDMAN,
CHESTER CARITY, :
IRVING W. BLUM,
HENRY L. HOFFMAN, :
HERMAN B. OBERMAN,
SOLOMON H. FRIEND, :
and DANIEL FRIEDMAN,
:
Defendants.
:
- -x

COUNTS ONE THROUGH SEVENTY

The Grand Jury charges:

1. The defendant AMREP CORPORATION (hereinafter referred to as "AMREP"), the successor corporation to American Realty and Petroleum Corporation and Great Sweet Grass Oils Company, is and was at all material times herein a corporation organized under the laws of the State of Oklahoma, with its principal place of business at 16 West 61st Street, New York, New York, within the Southern District of New York.

2. The defendant RIO RANCHO ESTATES, INC. (hereinafter referred to as "RIO RANCHO") is and was at all material times herein a corporation organized under the laws of the State of New Mexico and a wholly-owned subsidiary of AMREP.

3. The defendant ATC REALTY CORPORATION (hereinafter referred to as "ATC") is and was at all material times herein a corporation organized under the laws of the State of New York with its principal place of business within the Southern District of New York. ATC is and was at all material times herein a wholly-owned subsidiary of AMREP engaged in the marketing and sale of parcels of land owned by RIO RANCHO.

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4. The defendant HOWARD W. FRIEDMAN is President and a director of AMREP and RIO RANCHO and a director of ATC, and was at all material times herein an officer and director of AMREP, RIO RANCHO and ATC.

5. The defendant CHESTER CARITY is Executive Vice-President and a director of AMREP and RIO RANCHO and President of ATC, and was at all material times herein an officer and director of AMREP and RIO RANCHO.

6. The defendant IRVING W. BLUM is Chairman of the Board and a director of AMREP and RIO RANCHO, and was at all material times herein an officer and director of AMREP and RIO RANCHO and a director of ATC.

7. The defendant HENRY L. HOFFMAN is and was at all material times herein a director of AMREP and RIO RANCHO. From approximately 1961 to approximately September 1974, defendant HOFFMAN held a number of executive positions in defendant AMREP and RIO RANCHO, including Senior Vice-President and Vice-President of AMREP and RIO RANCHO. Since approximately October 1, 1974, and at all material times thereafter, he acted as a consultant for AMREP.

8. The defendant HERMAN B. OBERMAN was President of AMREP and RIO RANCHO in 1961 and a director of AMREP and RIO RANCHO in 1961 and 1962, and at all material times thereafter he continued to act as an agent for AMREP and RIO RANCHO.

9. The defendant SOLOMON H. FRIEND is General Counsel of AMREP. Since approximately 1970, defendant FRIEND has held a number of executive positions in defendant corporations, including Senior Vice-President of AMREP, director of AMREP, Vice-President of RIO RANCHO, Vice-President of ATC, and director of ATC.

10. The defendant DANIEL FRIEDMAN is Senior Vice-President of Sales and a director of AMREP and Vice-President of RIO RANCHO. At all material times herein from approximately 1967, defendant FRIEDMAN was an officer of AMREP and, from approximately 1972, a director of AMREP.

11 From on or about January 1, 1961, and continuously thereafter, in the Southern District of New York and elsewhere, HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC, the defendants herein, and other co-schemers to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud and for obtaining money and property, by means of false and fraudulent pretenses, representations and promises, from the persons to be defrauded, to wit: potential investors and investors who purchased parcels of land in Sandoval County, New Mexico from RIO RANCHO.

12. It was a principal part of this scheme and artifice that the defendants and their co-schemers would and did acquire, and cause to be acquired more than 91,000 contiguous acres of semi-arid desert grazing land in Sandoval County, New Mexico for approximately $130 per acre; call this desert land "Rio Rancho Estates" and subdivide it, by bulldozing dirt roads and staking boundary corners, into approximately 86,000 lots; describe lots of approximately one-half acre or less as "homesite", "commercial", or "multi-dwelling" lots and larger ones as "ranchette" lots, all in a "master-planned community"; and offer the lots for sale at prices alleged to include lot access to water and utilities and other customary amenities. The prices for "homesites" have recently ranged from approximately $6,200 to $11,800 per acre, and the "commercial" and "multi-dwelling" lots, usually smaller than a half acre, have recently been selling for from $3,150 to in excess of $25,000. The defendants and their co-schemers

paid approximately $17,850,000 for the land in Rio Rancho Estates and sold over 77,000 lots to more than 45,000 purchasers from some 37 states. The lots were generally sold under five to eight year installment contracts which required a down-payment and monthly payments of principal and interest. Total sales income exceeded $200,000,000.

13. It was a further principal part of this scheme and artifice that the defendants and their co-schemers would and did concentrate their sales efforts, and caused them to be concentrated, almost exclusively on people who lived outside of New Mexico and were unfamiliar with the real estate market there, and would and did use, and cause to be used, sales techniques which were designed and devised to pressure the persons to be defrauded immediately to sign contracts to purchase lots, and which involved a variety of false and fraudulent pretenses, representations and promises, to mislead the persons to be defrauded into believing, among other things, that the purchase of lots in Rio Rancho Estates was a unique investment opportunity made possible by defendant RIO RANCHO's "low mark-up policy"; that the lots were safe and secure financial investments, would appreciate rapidly and significantly in resale market value and could be resold at a substantial profit; that the lots sold and offered for sale were being developed and improved with water and utilities and with other customary amenities as part of defendants' "master-planned community", and that Albuquerque was "bursting at the seams", with a scarcity of land for development and building in and around the city, and could only grow in the direction of and through Rio Rancho Estates; all of which

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pretenses, representations, and promises were false, fraudulent and misleading, as defendants and their co-schemers then and there well knew.

14. It was a further principal part of this scheme and artifice that the defendants and their co-schemers, in order to create the false impression that they were gradually developing all of the 91,000 acres of Rio Rancho Estates as a "master-planned community", would and did install and cause to be installed, water and utility services and other customary amenities in small company-owned "building areas". While some purchasers planning to build homes were permitted to exchange their unimproved lots for lots in a building area under a so-called "exchange privilege", the privilege was set up so that only a single half-acre "homesite" lot could be exchanged for a "building area" lot and the person exchanging had to retain [illegible] excess land, the purchaser usually had to pay a substantial premium to exercise the "privilege" and usually ended up with a smaller piece of land, and all purchasers of "homesite" lots could in no event exchange their lots for lots with utilities since not enough land was set aside in company-owned "building areas" for that purpose.

15. It was a further principal part of this scheme and artifice that the defendants and their co-schemers would and did cause their salesmen to represent to the persons to be defrauded that "commercial", "multi-dwelling" and "ranchette" lots were particularly valuable investments and that "commercial" and "multi-dwelling" lots would not only appreciate greatly in value but would also be income-producing, whereas, in truth and in fact, as the defendants

and their co-schemers then and there well knew, construction on most "commercial", "multi-dwelling" and "ranchette" lots was not feasible because they lacked access to utilities; that such lots could not be exchanged for a lot with utilities in a company-owned "building area"; utilities services were miles away from most of these lots and the policies of the utilities companies precluded extensions of services to all but a small percentage of these lots; even if utilities services could be obtained for these lots, the purchasers would have to bear the cost and it would not be practical or economically feasible to do so on a lot by lot basis, and the "commercial" and "multi-dwelling" lots sold and offered for sale would not be surrounded by the type of contiguous development necessary for these lots to be put to the use for which they were supposedly created.

16. It was a further principal part of this scheme and artifice that the defendants and their co-schemers would and did deliberately conceal and fail to reveal and cause to be concealed and not revealed, to the persons to be defrauded certain information, including the following facts, which the defendants and their co-schemers then and there well knew would show that the purchase of lots in Rio Rancho Estates was not a sound, risk-free financial investment, but rather was a non-liquid, exceptionally poor, and risky investment: i) that there was virtually no resale market for these lots throughout the entire fifteen years of this scheme and artifice; ii) that the defendants and their co-schemers had not improved, and were not improving, the lots being sold with water, utilities and other customary amenities, but rather were making such improvements only in small company-owned "building areas", the lots in which were not being offered for sale to the persons to be defrauded; iii) that only a small percentage of the total number of purchasers of lots would ever move to Rio Rancho Estates;

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

i) [illegible]

ii) [illegible]

iii) [illegible]

iv) [illegible]

v) [illegible]

vi) [illegible]

vii) [illegible]

viii) [illegible]

ix) [illegible]

x) [illegible]

xi) [illegible]

xii) [illegible]

(g) The defendants and co-schemers, as part of their sales campaign and promotional activities made, and caused to be made, the following additional representations and statements of similar purport, among others, with the intention that the persons to be defrauded would be misled into believing that Albuquerque would only grow in the direction of and through Rio Rancho Estates;

i) Rio Rancho Estates is located directly in the path of Albuquerque's growth;

ii) Albuquerque can only grow in the direction of Rio Rancho Estates;

iii) Albuquerque is "bursting at the seams";

iv) Albuquerque is experiencing a tremendous population explosion resulting in an increased demand for land, and an increased [illegible] the "homesites" of Rio Rancho Estates;

v) "With the population of Albuquerque expected to double and redouble every ten years with land [illegible] on [illegible], [illegible] are being forced by the law of supply and demand to pay higher and higher prices for choice homesite land";

vi) "Rio Rancho's unique location assures the continued rise in value of its land [illegible] upon such population growth";

vii) Available land in and around Albuquerque is scarce and will be exhausted within ten years;

viii) As the demand for land increases "homesite" lots at Rio Rancho Estates are rapidly increasing in value;

ix) "Even with Albuquerque's population [illegible] it is [illegible] expect to predict that land prices in the area should continue to reflect [illegible] population pressures, and [illegible] the growing Northwest Mesa [illegible] where Rio Rancho Estates is located";

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x) "many people at Albuquerque who are familiar with local real estate values and know the direction that Albuquerque's growing population must take in its search for homesites, are going out of their way to make monthly payments on 2 to 10 acre tracts....larger holdings which could lead to a sizeable retirement 'nest egg' if land values continues to double and redouble as they have over the recent past".

(r) The defendants and their co-schemers as part of their sales campaign and promotional activities made, and caused to be made, the following additional representations and statements of similar purport, among others, with the intention that the persons to be defrauded would be misled into believing that increases in land values in the Albuquerque metropolitan area were a valid basis of comparison to, and were indicative of, purported increases in land values of lots in Rio Rancho Estates, and that the prices at which lots in Rio Rancho Estates could be resold increased and would continue to increase at a similar rate:

i) "the history of land prices all around Rio Rancho Estates as well as Albuquerque proper over the past 20 years show prices doubling and redoubling again and again every few years",

ii) "in this booming resort area, where it has been typical for land prices to jump 200%, 300% even more in a few short years, you can control choice acreage worth thousands of dollars right now... all you need is a small deposit",

iii) "in the past 20 years, land prices in the Albuquerque area have increased at a rapid pace, averaging about 25% per year but in many cases accelerating as much as 300 to 600% in a given year",

iv) "in the past when American Realty and Petroleum Corporation (AMREP) announced plans for a new community, prices on adjacent properties almost instantly jumped 100 to 300%",

v) "land values in the vicinity of Albuquerque have consistently risen by an average of more than 25% per year since 1961 -- and may climb even faster".

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841

(s) At the same time as the aforesaid representations were being made, the defendants and their co-schemers concealed and failed to reveal to the persons to be defrauded the following material facts which, as the defendants and their co-schemers well knew, were necessary to make the representations that were made, in light of the circumstances under which they were made, not misleading, false and fraudulent:

i) that there had been virtually no resale market for lots in Rio Rancho Estates through-out the entire 15 years of this scheme and artifice;

ii) that the growth of Albuquerque had not had and would not have any significant effect on the demand for lots in Rio Rancho Estates, since there was sufficient land for development in Albuquerque or closer to it than Rio Rancho Estates to satisfy the most optimistic long-range growth projections for Albuquerque;

iii) that Rio Rancho Estates was not in the necessary or only possible direction in which Albuquerque could be expected to grow;

iv) that the defendants and their co-schemers in 1966 received a report from a land planning firm retained by them which indicated that the growth of Albuquerque would have no appreciable effect on the demand for lots in Rio Rancho Estates;

v) that only a small percentage of purchasers would move to Rio Rancho Estates and that most purchasers bought for investment and therefore would be in competition with each other in attempting to resell their land;

vi) that the defendants and their co-schemers had purchased 54,000 acres of the land comprising Rio Rancho Estates in 1961 for $178 per acre and had purchased an additional 31,000 acres at an average price of approximately $180 per acre in the period from 1969 through 1971, and had already marked up the land by as much as several thousand percent;

vii) that the price of the lots did not reflect their value in the open market but rather reflected, if anything, the excessive promotional costs incurred in selling the lots;

viii) that the defendants had not and did not intend to improve most of the lots sold and offered for sale by providing access to water, utilities and other amenities;

ix) that, except in the case of a small percentage of lots, access to utilities was miles away, and policies of the utility companies in extending their services were such that all but a small percent of the persons to be defrauded would be unable to obtain water and utilities for their lots;

x) that it was not practical or economically feasible for the persons to be defrauded to obtain utilities on a lot to lot basis.

18. On or about the dates hereinafter set forth, in the Southern District of New York, HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC, the defendants, for the purpose of executing the scheme and artifice to defraud as alleged in paragraphs 1 through 17, hereinabove, and attempting to do so, unlawfully, wilfully and knowingly did place and cause to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail according to the directions thereon matter to be delivered by the United States Postal Service, as more particularly set forth below:

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
1	8/21/72	Donald&Mildred Berrie, 43 Lafayette Sea Cliff, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
2	9/25/73	Bernard&Patricia Billoch 3548 Arden Blvd. Youngstown, Ohio 44511	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
3	10/9/75	Jeanne Norris 126 Park Street West Pittston, Pennsylvania	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
4	2/16/72	Milton Freundlich 3101 Ocean Pkwy. Brooklyn, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
5	10/28/71	Robert&Constance Accinni 61 Oceanside Rd. Rockville Center, New York 11570	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
6	9/12/72	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Hilda Morse 173 Riverside Drive New York, N.Y. 10024	Letter
7	9/15/75	Finnen, DelCampe & Caniano 917 Sunrise Ave. Bellmore, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
8	5/22/75	Vincent&Luciano Perto. 48-15 44 Street Woodside, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
9	5/15/74	James Rovito 2848 Colonial Ridge Ct. Cinn. Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
10	11/9/71	Morris&Florence Gusowsky 600 Rincon De Romos, Rio Rancho New Mexico	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
11	10/10/75	Antonio&Olive Reyes-Guerra 50 Winter Hill Rd. Tuckahoe, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
12	6/73	Riley Bryan Route 1 Colon, Michigan	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
13	1/11/72	Elizabeth Raimann 651 No. Terrace Ave., Mt. Vernon, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
14	9/23/75	Billy Sisco Box 26C Gold Camp Rd. Colorado Spring, Colo.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
15	10/9/75	Carl&Neva Falk 186 Paul Court Hillsdale, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
16	7/31/75	Louis&Sylvia Crifo 25-36 73 Street Jackson Heights	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
17	7/2/73	Gary Kulp Blackberry Lane RDI, Box 185 Malvern, Pa. 19355	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
18	11/28/72	Aldo&Ruth Petrillo 249 Long Pond Dr. South Yarmouth, Mass.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
19	5/12/72	Mr.&Mrs.D.Butler 48 Hoffman Lane Blauvelt, N.Y. 10913	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
20	2/24/72	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Mr&Mrs. Orland Credintino 311 Elwood Ave. Hawthorne, N.Y. 10532	Letter
21	8/16/74	Richard W. Gray 40 A Garden Village Drive Cheetawago, N.Y.	Chemical Bank P.O. Box 5257 N.Y., N.Y.	Payment

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
22	10/20/75	Mr.&Mrs. Morden 203-32 15 Drive Bayside, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
23	12/75	Mr &Mrs. Henry 173 Strawtown Rd New City, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
24	11/1/74	Frank Tomasulo 360 E 72 St N.Y., N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
25	12/75	Mildred H Kaplan 370 Ocean Pkwy Brooklyn, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
26	8/71	Mr.&Mrs. Louis Bonavista 1480 Thieriot Ave Bronx, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
27	12/27/75	Mr.&Mrs. Wells Box 17 Malaga, Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
28	12/10/75	James Davis P.O. Box 23 Port Jefferson, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
29	2/10/75	Adam&Jadwiga Sporzynski 17516 Neff Rd. Cleveland, Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
30	6/13/75	Sylvester Mizell P.O. Box 110 Greenwich, Conn.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
31	2/3/72	Irving A. Futlick 247 Parkview Ave. Bronxville, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
32	8/16/74	Dorothea Richters 2006 Oakwood Ave Merrick, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
33	3/73	Glory Banks 155 E 38 St N.Y., N.Y. 10016	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
34	9/8/72	Mr.&Mrs. Nugent 2530 Elm St. Butte, Montana 59701	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
35	12/1/75	K. Mohammed- Ladson 40-13 10 St. L.I. City, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
36	4/28/75	Rio Rancho Estates 1429 Central N.W. P.O. Box 1516 Albuquerque, N.M. 87104	Samuel A. Kaufman 185 East 162 St. Bronx, N.Y. 10451	Letter
37	7/29/71	Rio Rancho 3900 Southern Blvd. Rio Rancho, N.M.	Mrs. Hortense Feig 585 West End Ave. N.Y.,N.Y. 10024	Letter
38	9/18/72	Ethel&Samuel Louis 321 Boone St. Piqua, Ohio	Chemical Bank N.Y. Trust Co. P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
39	8/29/72	Clarence A. Thorne Fallon, Nevada	Chemical Bank N.Y. Trust Co. P.O. Box 5257 Church Street Station N.Y., N.Y.	Letter
40	8/2/71	Charles M. Clymer 301 W.T. St. Tumwater, Wa.	Chemical Bank N.Y. Trust Co. P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
41	12/15/72	ATC Realty Corp. 1790 Broadway New York, N.Y.	Mrs. Lillian Sender 964 East 102 St. Brooklyn, N.Y. 11236	Letter
42	1/15/73	David B. Spinelli Barracks 2289 NKP Air Force Base Thailand	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
43	10/15/73	Mr.&Mrs. Minch 1953 Rockford Rd. Indianapolis, Indiana	Rio Rancho P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
44	7/8/76	William Brindle 8 Alpha St. Milford, Conn.	Rio Rancho P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
45	11/18/71	John P.&Dorothea Paulson 254 Collfield Staten Island, N.Y., N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
46	6/19/75	David Jones 140-21 Queens Blvd. Jamaica, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station	Payment

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
47	9/18/75	Max&Blanche Glass 1085 East 22 St. Brooklyn, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
48	12/3/73	Margaret E. Stark 200 E. 36 St. N.Y., N.Y. 10016	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
49	4/19/72	Rio Rancho 3900 Southern Blvd. Rio Rancho, New Mexico 87124	Zarko Dabovich 940 North Serrano Ave. Los Angeles, Calif. c.c. ATC Realty Corp.	Letter
50	6/3/75	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Mr.&Mrs. James Christiano 2 Rock Ridge Dr. Port Chester, N.Y. 10573	Letter
51	6/12/75	Joseph&Vivian Speetjens 30 Holly Place Torrington, Conn.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
52	2/72	A. Ramadan 1945 Kennedy Blvd. Jersey City, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
53	12/25/75	Mr.&Mrs. Anzalone 201 E. 28 St. N.Y., N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
54	11/27/73	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Ms. Constance M. Paterno 707 Van Nest Avenue Bronx, N.Y.	Letter

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
55	12/12/75	Phyllis M. Griffith 5 Admiral St. Easthampton, Mass.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
56	10/11/72	Mr.&Mrs. Seil 48 Ferndale Blvd. Islip, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
57	6/20/75	Robert G. Wagner Route 3 Bucyrus, Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
58	10/28/74	Mr.&Mrs. Switt P.O. Box 182 Browns Mills, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
59	7/31/72	Mr.&Mrs. Baczynski 210 St. Benedict Lane Florissant, Missouri	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
60	7/75	Mr.&Mrs. Slocum 301 Ridge Rd. Oriskany, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
61	10/75	Mr.&Mrs. Fox 170-9 Dreiser Loop Bronx, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
62	10/75	Neil Gordon 144-60 Gravett Rd. Flushing, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
63	11/19/75	Mr.&Mrs. Dotter 109 3 Ave. Hawthorne, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
64	10/75	Dennis G. Finnerty 325 East 201 St. Bronx, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

M-841

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
65	12/30/71	Edward Dwyer P.O. Box 75 Shady, N.Y.	Dan Monaco ATC Realty Corp. 16 West 61 St. N.Y., N.Y.	Letter
66	6/9/75	Mr.&Mrs. Miller 15 Chestnut Hill Drive Toms River, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
67	7/3/75	Mr.&Mrs. Hampe Box 473A Middlefield, Conn.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
68	12/10/75	Elinor Dewitt 585 West End Ave. N.Y., N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
69	3/6/73	ATC Realty Corp. 1790 Broadway N.Y., N.Y.	Mr.&Mrs. Leon Schwartz 1189 East 56th St. Brooklyn, N.Y.	Letter
70	7/8/75	Mr.&Mrs. Joseph Schiller 25 Tulip St. Cranford, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

(Title 18, United States Code, Sections 1341 and 2.)

COUNTS SEVENTY-ONE THROUGH EIGHTY

The Grand Jury further charges:

1. From in or about April, 1969, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC and their co-schemers, all of whom were at all times material to this indictment "developers" and "agents" as defined in Title 15, United States Code, Section 1701(4)(5), would and did directly and indirectly by the use of the means and instruments of transportation and communication in interstate commerce and of the mails in the sale of and the offer to sell lots in Rio Rancho Estates, unlawfully, wilfully and knowingly, employ a device, scheme and artifice to defraud; and engage in transactions, practices and courses of business which operated and would and did operate as a fraud and deceit upon the persons to be defrauded to whom said defendants directly and indirectly would and did attempt to and did sell and offer to sell lots in Rio Rancho Estates.

2. The allegations contained in paragraphs 11 through 17 of Counts One through Seventy of this indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which the defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC and their co-schemers committed the offenses charged in paragraph 1 of Counts Seventy-One through Eighty.

3. Among the other means by which the defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC, and their co-schemers would and did commit the

offenses charged in paragraph 1 of these Counts were the following:

a) the defendants and their co-schemers would and did cause telephone calls to be made to the persons to be defrauded to invite the persons to be defrauded to sales dinners; to confirm the attendance of the persons to be defrauded at sales dinners; to make appointments to visit the persons to be defrauded in their homes; and to confirm information regarding sales that were made at sales dinners and in the homes of the persons to be defrauded;

b) the defendants and their co-schemers would and did cause the purchase of lots at Rio Rancho Estates to be advertised on radio and television for the purpose of having the persons to be defrauded contact the defendants by mail and telephone so that the defendants and their co-schemers could make a sales presentation to the persons to be defrauded.

4. On or about the dates hereinafter set forth in Counts Seventy-One through Eighty in the Southern District of New York and elsewhere, defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC, and their co-schemers, unlawfully, wilfully and knowingly did use and cause to be used the means and instruments of transportation and communication in interstate commerce pursuant to and in furtherance of the offenses alleged in paragraph 1 of these Counts as hereinafter set forth:

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-841

COUNT	DATE	MEANS AND INSTRUMENT
71	November 22, 1974	WOR-TV
72	November 18, 1974	WPIX-TV
73	November 25, 1974	WNEW-TV
74	November 23, 1974	WABC-TV
75	March 25, 1975	WCBS-TV
76	March 28, 1975	WNBC-TV
77	March 26, 1973	WINS-Radio
78	April 3, 1973	WHN-Radio
79	July 6, 1973	WCBS-Radio
80	April 7, 1972	Telephone

(Title 15, United States Code, Section 1703(a)
and Title 18, United States Code, Section 2.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

[illegible]

Defendants.

INDICTMENT

S 73 Cr.

[illegible] U.S.C. §§ [illegible] and 2

[illegible] U.S.C. §§ [illegible] and 2

[illegible]
United States Attorney.

A TRUE BILL

Foreman.

FPI--SS--2-19-71--20M--6950

D 30

United States of America vs.

United States District Court for

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT AMREP CORP.

DOCKET NO. 76 cr. 644 (s)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared [redacted] by Howard Friedman, President

MONTH	DAY	YEAR
Mar.	10	1977

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Larry Lavinsky Esq.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE ☐ NOT GUILTY

FINDING & JUDGMENT

There being a [redacted]/verdict of ☐ NOT GUILTY. Defendant is discharged ☒ GUILTY

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud by means of false and fraudulent pretenses, representations and promises and did directly and indirectly by the use of the means and instruments of transportation and communication in interstate commerce and of the mails in the sale of ~~the~~ and the offer to sell lots.
(Tit.18,U.S.C.,Sects.1341 and 2.) (Tit.15,U.S.C.,Sect.1703(a).) and
(Tit.18,U.S.C.,Sect.2.)
as charged in counts 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79.

~~The Court asked whether the~~

SENTENCE OR PROBATION ORDER

and the Court asked the defendant whether it had anything to say why judgment should not be pronounced. Because not sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that the defendant be fined the sum of, $1,000.00 on each of counts, 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67- and 68 and fined the sum of, $5,000.00 on each of counts, 71-72-73-75 and 79 for a grand total of $45,000.00.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the [illegible] be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

CHARLES M. METZNER
Date Mar.10,1977

CERTIFIED AS A TRUE COPY ON
THIS DATE Mar.10,1977
By ( ) CLERK ( ) DEPUTY

A 38

United States of America vs.

United States District Court for
SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

Rio Rancho Estates Inc.

76 cr. 644 (s)

DOCKET NO.

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH Mar. DAY 10 YEAR 1977

XXXXXXXXXXXX
by Howard Friedman, President

COUNSEL

WITHOUT COUNSEL

X WITH COUNSEL Stanley Arkin Esq.

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

XXXX

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

X

GUILTY

FINDING & JUDGMENT

unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud by means of false and fraudulent pretenses, representations and promises and did directly and indirectly by the use of the means and instrumen of transportation and communication in interstate commerce and of the mails in the sale of and the offer to sell lots.
(Tit.18,U.S.C.,Sects.1341 and 2.) (Tit.15,U.S.C.,Sect.1703(a) and
(Tit.18,U.S.C.,Sect.2.)
as charged in counts 7-10-11-21-22-23-26-28-29
35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79.

XXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SENTENCE OR PROBATION ORDER

the imposition of sentence is suspended on each of counts, 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

COMMITMENT RECOMMENDATION

SIGNED BY

X U.S. District Judge

CHARLES M. METZNER

Mar.10,1977

Date

CERTIFIED AS A TRUE COPY ON

THIS DATE Mar.10,1977

BY

X CLERK
DEPUTY

United States of America vs.

United States District Court for

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT: ATC REALTY CORP

DOCKET NO. 76 cr. 644 (s)

[illegible] AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared XXXXXXXXXX by Chester Carity, President

MONTH	DAY	YEAR
Mar.	10	1977

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Stanley Arkin, Esq.

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,
☐ NOLO CONTENDERE,
☐ NOT GUILTY

FINDING & JUDGMENT

There being a XXXXX verdict of
☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud by means of false and fraudulent pretenses, representations and promises and did directly and indirectly by the use of the means and instrumen of transportation and communication in the interstate commerce and of the mails in the sale of and the offer to sell lots.
(Tit.18,U.S.C.,Sects. 1341 and 2.) (Tit.15,U.S.C.,Sect.1703(a)) and (Tit.18,U.S.C.,Sect.2.)
as charged in counts 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: XXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

the imposition of sentence is suspended on each of counts, 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

[illegible]

COMMITMENT RECOMMENDATION

The court recommends commitment to the custody of the Attorney General or his authorized representative.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
X
☐ U.S. District Judge
☐ U.S. Magistrate

CHARLES M. METZNER

Date Mar.10,1977

CERTIFIED AS A TRUE COPY ON
THIS DATE Mar.10,1977
By X
☐ CLERK
☐ DEPUTY

A 40

United States of America vs.

United States District Court for
SOUTHERN DISTRICT OF NEW YORK

DEFENDANT: Howard Friedman

DOCKET NO. 76 cr. 644 (s)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH Mar. DAY 10 YEAR 1977

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☐ WITH COUNSEL Stanley S. Arkin Esq.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,
☐ NOLO CONTENDERE,
☐ NOT GUILTY

FINDING & JUDGMENT

There being a [redacted] verdict of
☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud by mean of false and fraudulent pretenses, representations and promises and did directly and indirectly by the use of the means and instruments of transportation and communication in interstate commerce and of the mails in the sale of and the offer to sell lots.
(Title 18, United States Code, Sections 1341 and 2.)
(Title 15, United States Code, Section 1703(a) and Tit. 18, U.S.C. Sect. 2.)
as charged in counts 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SIX (6) MONTHS on each of counts 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79 to run concurrently with each other.

The defendant is contunued R.O.R. pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

[illegible] during the probation period.

COMMITMENT RECOMMENDATION

The court recommends commitment to the custody of the Attorney General and recommends

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

CHARLES M. METZNER

Date MARCH 10, 1977

CERTIFIED AS A TRUE COPY ON
THIS DATE Mar. 10, 1977

By
☐ CLERK
☒ DEPUTY

A 41

United States of America vs.

United States District Court for
SOUTHER N DISTRICT OF NEW YORK

DEFENDANT

Chester Carity

DOCKET NO. ➤ 76 cr. 644 (s)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date ⟶

MONTH	DAY	YEAR
Mar.	10	1977

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Peter Fleming Esq.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a [redacted] verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud by mea of false and fraudulent pretenses, representations and promises and di directly and indirectly by the use of the means and instruments of transportation and communication in interstate commerce and of the mail in the sale and the offer to sell lots.
(Tit.18,U.S.C.Sect.1341 and 2.) (Tit.15,U.S.C.Sect.1703(a) and (Tit.18,U.S.C.Sect.2.)
as charged in counts 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SIX(6)MONTHS ON EACH OF COUNTS 7-10--11-21/22/23-26-28-29-35-36-40-41-44 46-53-61-64-67-68-71-72-73-75- and 79 to run concurrently with each other.

The defendant is continued R.O.R. pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

[illegible]

COMMITMENT RECOMMENDATION

☐ The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate ▶ CHARLES M. METZNER

Date Mar.10,1977

CERTIFIED AS A TRUE COPY ON
THIS DATE Mar.10,1977
By
☐ CLERK
☒ DEPUTY

6

A 42

United States of America vs.

United States District Court for SOUTHERN DISTRICT OF NEW YORK

DEFENDANT: Henry L. Hoffman

DOCKET NO. 76 cr. 644 (s)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH Mar. DAY 10 YEAR 1977

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Stanley Arkin Esq. (Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea. ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a [redacted]/verdict of ☐ NOT GUILTY. Defendant is discharged ☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud by means of false and fraudulent pretenses. representations and promises and did directly and indirectly by the use of the means and instruments of transportation and communication in interstate commerce and of the mails in the sale of and the offer to sell lots.
(Tit.18,U.S.C.,Sects.1341 and 2.) (Tit.15,U.S.C.,Sect.1703(a) and (Tit.18,U.S.C.,Sect.2.)
as charged in counts 7-10-11-21-22-23-26-28-29-3
36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SIX(6)MONTHS on each of counts 7-10-11-21-22-23-26-28-29-35-36-40-41 44-46-58-61-64-67-68-71-72-73-75 and 79 to run concurrently with each other.

The defendant is continued R.O.R. pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

CHARLES M. METZNER

Date Mar.10,1977

CERTIFIED AS A TRUE COPY ON THIS DATE Mar.10,1977

By ☐ CLERK ☒ DEPUTY

United States of America vs.

United States District Court for
SOUTHERN DISTRICT OF NEW YORK

DEFENDANT: Daniel Friedman

DOCKET NO. 76 cr.644 (s)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH Mar. DAY 10 YEAR 1977

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Peter Fleming Esq.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a [redacted] verdict of
☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud by means of false and fraudulent pretenses, representations and promises and did directly and indirectly by the use of the means and instruments of transportation and communication in interstate commerce and of the mails in the sale of and the offer to sell lots.
(Tit.18,U.S.C.,Sects, 1341 and 2.)(Tit.15,U.S.C.,Sect.1703(a) and (Tit.18,U.S.C.,Sect.2.) as charged in counts 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75 and 79.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SIX(6)MONTHS on each of counts 7-10-11-21-22-23-26-28-29-35-36-40-41-44-46-58-61-64-67-68-71-72-73-75- and 79 to run concurrently with each other.

The defendant is continued R.O.R. pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

CHARLES M. METZNER

Date Mar.10,1977

CERTIFIED AS A TRUE COPY ON
THIS DATE Mar.10,1977
By
☐ CLERK
☒ DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

AMREP CORPORATION, et al

Defendants.

Before:
HON. CHARLES M. METZNER, D.J.,
and a Jury.

76 Cr. 644

New York, November 3, 4, 5, 1976

STENOGRAPHER'S MINUTES

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

November 3, 1976
10:00 A.M.

(In the robing room)

THE COURT: I think we are going to have to enforce a rule only one attorney for each defendant, not with all the assistants, because there is no room to do it.

Mr. Glendon, I think you requested this. Mr. Glendon represents the defendant Friend.

MR. GLENDON: Your Honor, I wanted to bring to your attention a matter in connection with your opinion on the disqualification of my firm. In that opinion you said that when Mr. Winslow left the firm in 1968 the firm had no connection thereafter with AMREP and I believed that to be true.

However, it has come to my attention there were a couple of matters which I should tell you about and I do not think they are material, but I think it is fair and I should tell you.

In 1973 Mr. Winslow came to us and said that a couple of land companies were concerned about the proposed regulation and asked us whether we would consider working on it in consideration with a presentation that might take place.

We looked at it. We did some research on it, but the matter was resolved without any action by us. We sent them a small bill. That is the matter I wanted to bring to your attention.

The other thing is even of less significance, I think, but I recalled that after 1972 they asked me to come over there one day and talk to them, I used to try libel cases, and they asked me to come over and give them a little briefing on the law of libel and I did that and this I am quite sure was without fee. It was sort of a courtesy to Winslow and I felt I should tell of you this.

THE COURT: I don't think it makes any difference in what I said in the opinion, Mr. Glendon.

Anybody else have anything?

MS. HYNES: Yes, your Honor.

Your Honor, your Honor has directed the defendants to complete reciprocal discovery required under the rules by Monday.

Yesterday we sent a representative to the law firm of Jacobs, Persinger & Parker to begin our review of the defendants reciprocal discovery. There were two file cabinets that we were directed to. Those file cabinets contained documents such as proxy statements, adding machine tapes on proxies, proxy ballots, etc. These are clearly not documents that the defendants presently intend to introduce in their case in chief and the rule requires that the discovery that the defendants must provide is the evidence which it intends to introduce in the defense of the case in chief at trial and the defendants are obviously not complying with that rule and are not complying with your HOnor's request to complete that discovery by Monday.

I would ask your Honor for a direction that the defendants separate out those documents which they presently intend to use in their case in chief at trial. If there are other documents where they have not made a decision as yet and it must await the government's evidence, those documents can be separated out.

Clearly there are documents that the defendants presently intend to use at trial and the government is entitled to review those documents.

We would ask to review those documents first and then if the defendants have a separate category of documents which they may introduce at the trial, we will review that cateogry of documents thereafter.

THE COURT: You represent the corporation?

MR. LAVINSKY: Yes, your Honor.

THE COURT: Don't you have the documents?

MR. LAVINSKY: You recall we discussed this back at one of our earlier hearings where I indicated we do not know at present what we are going to produce at trial. That everything is going to basically depend upon the government's case.

What we can do is make available the fund of documents out of which our evidence will come.

THE COURT: I won't stand for that any more than I would stand for the government throwing the junk at you. You are throwing it right back at them.

You have a fairly good idea what the government's case is going to be. You have seen all their exhibits. You know all their witnesses. You debriefed all their witnesses before the grand jury. You know that and that is why I told the government to stop kidding around. They weren't holding anything back that was secret. You knew it. So you get it.

There is no doubt there are things you bring in that you didn't think you were going to bring in that I will bet you right now you know eighty percent of what you think you might be called upon to use. Turn it over and don't turn over tapes. That is ridiculous. It has nothing to do with this case and you know it.

I want to see some meaningful discovery on the part of the defendants here. Mr. Arkin gives me a list of three hundred witnesses. I know he is not calling three hundred witnesses. He put the garbage can in and I had him called yesterday to stop this nonsense. Try this case the way competent lawyers are supposed to try a case.

Where Is your list of witnesses, Mr. Arkin?

MR. ARKIN: We have it here in court.

THE COURT: Let me have it. I don't want any garbage cans thrown at me. I don't have the time.

Mr. Fleming, what is your point?

MR. FLEMING: Your Honor, we on behalf of Mr. Carity and Daniel Friedman and we move for a severance from Mr. Friend pursuant to Rule 14 of the Federal Rules of Criminal Procedure.

We received the Court of Appeals -- a copy of the Court of Appeals opinion late Monday. I have only read it once so I don't really speak with any authority as to exactly what it says, but my understanding is that the prosecution now intends to offer as part of their direct case declarations by Mr. Friend made in the grand jury.

In my view whether those declarations are admissible or not under the Bruton rule, I believe they are not, perhaps the Court of Appeals has ruled that they are. Whether they are admissible or not, they are highly prejudicial in that any number of them state in essence that when I came to the corporation, the advertising was misleading and I told them to change it or words to that effect.

The question of admissibility aside, it seems to me we are back in the Omdellico decision . I find those statements to be terribly --

THE COURT: You did not convince the Court of Appeals of that in your argument.

MR. FLEMING: I didn't ask for a severance.

THE COURT: I gathered that was the whole point that the Court of Appeals was deciding.

MR. FLEMING: My point is that I think there is a different point.

THE COURT: You mean there is no Bruton point.

MR. FLEMING: Assuming there is no Bruton point, we lose the argument, if we lose it, on the question of admissibility under the Bruton case. I am assuming that we have lost that and there is no admissibility question.

That does not in any way affect the severance question just as, for example, the mass of evidence against the corporation could reach a point where we would deserve the severance.

I am saying admissibility aside, we did not argue this to the Court of Appeals, I am asking for a severance from Friend on behalf of Carity and Daniel Friedman because if I assume those are admissible, they are substantially damaging to the defense of our case and, therefore, under Rule 14 we believe we should be severed from the trial of Friend. It is a severance point I am making and not an evidentiary point.

I should notify -- Mr. Arkin will probably notify the Court that we intend to petition the Court of Appeals en banc with regard to the decision which was filed on Monday, but I am putting that aside.

THE COURT: You had better hurry up.

MR. ARKIN: That will be filed tomorrow morning, your Honor.

MR. FLEMING: If they decide that two of that panel were wrong, then we are back where we were to begin with and Ms. Hynes has whatever peril she has as a result of her opening.

THE COURT: Motion denied.

MR. FLEMING: Could I finish my record after what happened on Monday. I think that when a prosecutor takes a declaration in a grand jury by a defendant who is joined with other defendants for trial and with that declaration is by any fair reading, in fact by any reading, exculpatory of the declarant but incriminating of those with whom he is being tried, the author of that evidence, that declaration, under the guise of an admission by Mr. Friend, is transparent and is a deliberate attempt on the part of the prosecution to poison the right to the fair trial of the other defendant.

When a man in the grand jury says, when I got there it was bad and I made it good, there is no way that declaration can be offered rationally against his interest, his exculpatory declarant, and the only purpose for offering that kind of declaration, Bruton aside, is to get the other people in the case. It is transparent and obviously --

THE COURT: I am not sure that I am bound to let this testimony in.

MR. FLEMING: I agree with that, your Honor.

THE COURT: Aside from Bruton. They say it comes in under Bruton, there may be other reasons for excluding it.

MR. FLEMING: I am making my point only on severance.

THE COURT: I understand that and I deny your motion.

(A) There may be an accumulation at the end of the government's case and you can say that the government was so anxious to get you that they severed you out of the case and this is their problem. I have said this five times if I have said it once. They may end up with a couple of corporations in there, but that is their problem.

MS. HYNES: May I make a statement on the record in response to Mr. Fleming's argument that the government did not appeal all of your Honor's rulings with respect to the grand jury testimony of Mr. Friend.

We appealed certain rulings with respect to the testimony on the basis of Bruton. One of the rulings that we did not appeal is the exact ruling that Mr. Fleming is referring to, the portion of the grand jury testimony where Mr. Friend was saying that he thought the advertising was misleading and when he came he changed it.

We abided by your Honor's ruling on that. We did not take it up on appeal so it was not an issue on appeal.

THE COURT: There is another one there that

I saw yesterday in going through them. It is in that area, but we will worry about that when we get to the trial.

MR. ARKIN: Your Honor, I wanted to advise the Court and my friends from the prosecution that we are going to file tomorrow a petition for rehearing en banc and that I would suggest that with respect to those items which were the subject of the appeal, that since we are going to file tomorrow, that perhaps those items should not be right up front in the government's case. They certainly should not be in the opening. They perhaps ought to wait until the en banc hearing is denied or affirmed or whatever the case may be.

It seems to me that if we file tomorrow, as I understand the rule, that stays the mandate. It is filed within the statutory time, the mere filing of the petition stays a mandate; in effect stays the judgment, not the trial.

THE COURT: That is Ms. Hynes' problem, not mine.

MS. HYNES: I will state for the record that the government has every intention to mention the items that the Court of Appeals stated that we could use in evidence in our opening and we will do so.

MR. ARKIN: I wish to say that the government proceeds at its peril as I understand the law. We will file, I understand that stays the mandate, I know --

THE COURT: I don't know the rule myself, but if it stays the mandate, you cannot use it.

I never stayed the trial. I specifically refused it and the Court of Appeals refused to stay the trial.

MR. ARKIN: There is a difference between a mandate and a trial, your Honor.

THE COURT: You better have one of your assistants go do a research job on it, Ms. Hynes. I am sure you can have the answer by tonight.

MR. HOFFINGER: I would like to join in Mr. Flemings' motion. I don't want to repeat it.

I would like to say one word, if I may, without belaboring the point.

What Mr. Fleming was talking about, he was talking about using self-serving declarations which are not ordinarily admissible under the hearsay rule to contaminate the other defendants. I don't perceive it as a Bruton question. I perceive it as a pure hearsay question with terribly prejudicial effects.

Under ordinary circumstances, exculpatory statements are not admissible unless you can show that the statements themselves were false and they really show guilty knowledge. That is one thing, but I believe that in this case what has occurred is that those inculpatory statements, they are really inculpatory, those statements are being admitted against us and they are pure hearsay and they should not come in for that reason.

THE COURT: I gather the point is that Friend could only testify as a co-conspirator or as an officer of the corporation for his acts and conduct while he was in that position.

What is being offered are his views as to what things were before he came in.

MR. HOFFINGER: With all due respect, I do not believe the government would do that because that is pure hearsay. I just don't think they can do that.

THE COURT: Wait.

MR. HOFFINGER: I think they have already agreed --

MR. KAUFMAN: Mr. Hoffinger I think is arguing from a false premise. We are not offering those portions of the testimony that your Honor excluded on the grounds of the Geon case, in other words, a contrary litigating position.

The portion of the testimony where Friend said, when I came to the company I thought this was misleading and I corrected it, we will not be offering those. We are basically offering those portions of his grand jury testimony where he says, I knew there was no resale value. I knew what the projections were going to be.

Both Mr. Fleming and Mr. Hoffinger are not addressing themselves to that type of testimony.

THE COURT: The reason I denied your motion was it is too early to pass upon that motion.

MR. FLEMING: Without waiving our right.

MR. ARKIN: Your Honor, there are a lot of lawyers in this case, as your Honor commented when we first came in, Mr. Fleming made a motion and Mr. Hoffinger joined in it and I suppose I could make a speech.

If it appears reasonable, we should all join in and why don't we just deem it without all of us standing up that we join in the motion that would apply to our clients.

THE COURT: Normally during the course of a trial if an objection is made by one of defense counsel, I assume that motion has been made by all of defense counsel.

MR. ARKIN: Yes, that is the point.

THE COURT: I think when you make a motion standing in here for a severance and you want to identify yourself with it, all you have to do is as Mr. Hoffinger says, I join in the motion.

MR. ARKIN: I join in the motion.

MR. RUBINO: I join in that motion.

THE COURT: Denied.

MR. HOFFINGER: I would like to join in the motion on behalf of AMREP Corporation.

THE COURT: If I grant all the motions I have nothing left.

MR. HOFFINGER: Your Honor, I would like to say just one word and that is that in a series of letters you recall that went to the Court of Appeals on the recent appeal, one of those letters from Mr. Kaufman all but states that the material that would be offered against Mr. Friend incriminates the corporate defendant as well.

It seems to me that that graphically demonstrate the prejudice to the corporation by keeping it together with Mr. Friend in a joint trial.

THE COURT: Motion denied.

MR. GLENDON: Your Honor, going back to our last session on the pretrial, once in a while I would like to join in in the sense of being helpful. I have submitted a list of documents that I regard as patently inadmissible.

THE COURT: I have that list. We are going to have to work out some afternoon this week to clean those up.

MR. GLENDON: I would hope we can do that before the opening statements.

THE COURT: Yes.

MR. HOFFINGER: There is another bit of business that you should be apprised of and that is that there are going to be stipulations of substitution for two of the three corporate defendants.

I will continue, my firm will continue to represent AMREP Corporation, but Mr. Arisohn will be representing Rio Rancho and Mr. Lauer, I believe, will be representing ATC. There will be stipulations of substitution filed either today or tomorrow.

MR. ARKIN: Today they will be filed.

THE COURT: Mr. Lauer.

MR. LAUER: We will be entering an appearance for the firm.

THE COURT: The firm will represent the corporation and the two individuals.

MR. LAUER: That's correct.

MR. ARISOHN: I am with Stanley Arkin, your Honor.

THE COURT: What is Ms. Cross doing?

MR. ARKIN: Ms. Cross is representing Mr. Hoffman in terms of making the noises one makes in behalf of a defendant.

I will be representing Mr. Howard Friedman. Mr. Arisohn will make whatever noises need to be made for Rio Rancho Corporation, your Honor.

MS. HYNES: Your Honor, can we again inquire in the presence of the other defendants who are represented by other members of these firms whether they waive any possible conflict?

THE COURT: I don't think there is any conflict between any individuals and the corporation. There could have been conflict between individuals, but not between the corporations.

Who is going to speak for the corporation except the corporation?

MR. ARKIN: That is true. If there is a conflict, if your Honor please, I take it Mr. Kaufman or Ms. Hynes' agency theory would be pretty much out the window if there is a conflict, wouldn't it?

THE COURT: No, that wouldn't go out the window. The Supreme Court says that agents can conspire.

MR. ARKIN: The point being that if everything a claimed agent of the corporation says binds the corporation, it seems to me that here, if there is a conflict between any individual and the corporation, certainly it cannot be said that that agent would bind the corporation.

THE COURT: There is no conflict.

MR. ARKIN: Of course not. That is why I am suggesting that the interrogation Ms. Hynes suggests is ridiculous.

THE COURT: I have said no. I don't know why you keep talking.

MR. ARKIN: Sorry.

MR. FLEMING: I don't know whether the Court wants to take minor items now.

One is the presence of the defendants. They are running businesses and they would like the opportunity from time to time, maybe on a periodic basis, to be absent from court.

THE COURT: You know there is a case on that. They don't like it. For some extreme reason, yes, but normally the defendant should be here. The Court of Appeals has said that.

MR. FLEMING: Could we reserve on that, your Honor?

THE COURT: I think I indicated, was it Oberman who was ill, that I saw no reason -- or his wife was sick and he had to go to Florida.

MR. RUBINO: That is Mr. Blum.

THE COURT: I think I indicated he could get away Friday to go down on that with a statement from him on the record before he leaves.

MR. FLEMING: No question about that. Can we just reserve on that, then, your Honor? Their right was to be here, but they could waive that right.

THE COURT: There is a Second Circuit case in the last couple of years in which they said, as I recall it, yes, he can go once in a while, but normally you have to be here and don't stay away.

MR. FLEMING: I think we are talking about no more than one day a week so they can attend to their business.

THE COURT: Get the facts and find that case and we will work it out.

MR. RUBINO: I have nothing more to say except in respect to Oberman I might occasionally make that request.

MR. ARKIN: I take it we will be sitting between 10:00 and 4:30?

THE COURT: 10:00 and 4:30 and 10:00 and 5:00

unless you want to sit a couple of nights a week.

MR. ARKIN: No, your Honor, I was smiling because I would have hope it would not approach 5:00 o'clock.

THE COURT: If you go upstairs and decide some of my heavy motions for me, then I would work it out with you, but I have just got some stuff out there that is going to the Supreme Court and I have to write something decent on it.

If it was just going to stay here with my colleagues, I would just say "So ordered".

MR. RUBINO: We will sit on Thanksgiving Day if it is preceded by something we have to be thankful for.

THE COURT: I have told my wife she can forget about the winter.

MR. LAVINSKY: Could we have some indication of what will happen on Christmas.

THE COURT: I have a very demanding wife, but understanding,too. If you let me off to play tennis with her, she will say yes to anything.

I think as far as Thanksgiving is concerned, this Court has always sat on Friday. It has always been in session and all my colleagues hold court. That is no varianc at all.

We come to Christmas and New Years. I don't know where we are going to be. You are going to have a jury problem, too, of pressure not to come around. I saw one case, it was in the Court of Appeals only a month or two ago, it was perfectly obvious that between Christmas and New Years the Court sat Tuesday and Wednesday. I said to myself, thinking of this case, what good is Tuesday and Wednesday when you close on Thursday. You come in Tuesday and Wednesday and then close down the following Tuesday again.

Whether a whole week off makes any sense because of the way the holiday falls, I gather that the federal government will do what it has done in the past.

With Christmas on a Saturday, they declare Friday a holiday. They have done that in the past, which means you would have both Fridays out because they are holidays and nobody would be here.

I would be here and you may have to be, I hope not, but, on the other hand, the question is the four days in between.

What is the government's viewpoint on this?

MS. HYNES: Your Honor, I think we really have to wait to see what point we are in the trial. Right now the government's position would be that we could sit on those four days and have the long weekend in between.

THE COURT: To Mr. Hoffinger's wife, Friday and Saturday and Sunday, and his three children, don't think Friday, Saturday and Sunday is a long weekend. That is a normal weekend. He wants a real long weekend.

MS. HYNES: I think we do have to wait to see where we are and whether we have witness problems in addition to Mr. Hoffinger's problems with his family. It may be that some witnesses would have to be dealt with.

MR. FLEMING: We don't care, your HOnor, as long as you tell the jury that it is the government's request that they sit during that week.

MR. HOFFINGER: I am not adverse to telling the jury my problems.

THE COURT: I gather that our first order outside is to announce to the jury that this case, even before we tell them what it is about, is a case that can easily go three months and does anybody think we should tell them four months?

MR. ARISOHN: Yes, your Honor.

MR. ARKIN: Yes, your Honor.

MR. HOFFINGER: My own feeling is if you say three and it should go four, I think all of us would be hurt.

MR. ARKIN: I would not send through the mail any advice to a jury that the trial would be three months. I would like to see it three months or two months or one month.

THE COURT: If I did it it wouldn't be a scheme because I cannot scheme by myself.

I will tell the jury it could go four months.

MR. GLENDON: Three to four months.

THE COURT: And take excuses at that point. We have three hundred jurors out there. After we winnow those out, then start selecting what is left.

One of my great problems when you do this is you get some wiseguy excuses from people who like to sit on a jury. I suppose we have to take them one at a time. I don't want to embarrass counsel in front of any individual by getting some nod as to whether I should let them go ot not because that gets involved, but I suppose if a person makes a good excuse that he cannot sit for four months, a fellow runs a candy store cannot be expected to sit for four months.

I suppose a person on public service who gets paid anyhow and cannot lose their job, the excuse is automatically denied. School teachers --

MR. FLEMING: I would be willing to abide by your Honor's decision of reserving the right that if your Honor told a juror over the juror's objection that you would keep him, then I would like the right to object to that and say to the Court -- I will probably agree most of the time, but sometimes I might not.

THE COURT: If I force somebody to sit, anybody, the government, too, because I am sure they are as anxious to get a jury that will convict as you are to get a jury that will acquit --

MR. ARKIN: We just want a fair jury.

MR. FLEMING: You always win a fair trial.

MR. ARKIN: Here in particular.

THE COURT: Out of the hearing of such a juror I would listen to you. I wouldn't want a juror to hear any views that were expressed by either side.

MR. RUBINO: Your Honor, may I respectfully suggest that you tell the jury that they are not going to be sequestered because some of them might conclude that they are going to be sequestered for a long time.

THE COURT: As I sit here today, I wouldn't even sequester them during deliberations. I may change it as developments occur, but as I sit here today, this is not the sort of a case that I would do that.

MR. FLEMING: I would like to reserve on

deliberations so I hope you don't tell them that because I might request that.

THE COURT: I am just going to say this, this is not a case in which you will be sequestered during the trial. That covers that problems.

As far as I sit here today, I would say that I would not even sequester them during deliberations unless something came up that would indicate contrary-wise.

Incidentally, has Judge Owen charged the jury yet?

LAW CLERK: Tomorrow. As of yesterday he was supposed to charge the jury on Thursday. That jury is going to be sequestered over the weekend.

MR. ARKIN: One minor matter. I take it that with respect to the voir dire submitted by the government and its very lengthy opening statement which is contained --

THE COURT: That is out.

MR. ARKIN: I just wanted to make sure.

THE COURT: I gave a simple two paragraph description.

MR. KAUFMAN: Your Honor, we have one matter. With respect to tapes of dinner presentations that the defendants have listened to, they have informed us that they consider two of the tapes to be inaudible and their response is that so much of it is inadmissible that they cannot even come forth with agreeing that any part of it is audible.

I guess that means that we have to have an audibility proceeding.

THE COURT: What you do is as I do in any case involving audibility, you send up to my chambers a tape recorder with the tape, your proposed transcript of it. I close the door and I sit down by myself and I listen to it and I rule.

MR. KAUFMAN: We will do that within the next day or so.

THE COURT: If I think it is inaudible, it goes out. If I think it is inaudible and your transcript is a fair representation, it stays in.

I will say that my experience has been that when you listen to it in the courtroom, it usually sounds much better than it does when you listen to it in chambers and the transcripts even supplied by the government are terrible even to their own disadvantage.

It comes out much more audible in the courtroom. Maybe you have more sophisticated equipment in the courtroom, I don't know.

There is an FBI fellow in New Jersey who brought to me, because it was a wiretap in New Jersey, what he said was the most sophisticated equipment of its kind. Send that to me with your transcript and I will close the door and I will listen.

MR. KAUFMAN: We will do that.

MR. GLENDON: Your Honor, with my prospective witness list, I indicated that I had some character witnesses whom I did not identify and one reason for that, I know who two of them are, they are members of the judiciary who will come in under subpoena and I wanted to be sure it was agreeable with your Honor not to give their names.

THE COURT: In a character witness situation of a person of public character, you lose a juror, I mean a jury, if you had somebody who called the Mayor of the City of New York, everybody would know him.

Do you have a view against him, yes,and no jury.

Did I say against him, a view about him.

MR. GLENDON: May I submit an additional name in addition to the witness list, your Honor. It has been served on the government.

THE COURT: I have here an affidavit from --

I gather this is not an original -- from the Department of Justice.

MR. KAUFMAN: The original has been filed with the clerk's office.

THE COURT: Mr. Kaufman, regarding inquiry as to electronic surveillance. The Justice Department has made a survey of about ten agencies and comes back with the statement that there was no electronic surveillance. The only one they had no information on was the National Security Agency.

Mr. Kaufman submits an affidavit in conjunction with that and indicated that the National Security Agency indicated there was a tapping of a person by the name of D. Friedman in connection with a counter-espionage surveillance, but Mr. Friedman was not the target of the surveillance and, therefore, it is not possible to further identify him.

Mr. Kaufman says he has reviewed the intercepted communications and there is nothing by any stretch of the imagination that would indicated that D. Friedman was Daniel Friedman.

Have you served this?

MR. KAUFMAN: Yes,your Honor.

MR. RUBINO: We have it, Judge.

MS. HYNES: There is one minor housekeeping matter in connection with the witness lists. I had suggested to your Honor at a pretrial hearing that in connection with reading the names of witnesses your Honor might want to read the names of people who presently live at Rio Rancho --

THE COURT: I am reading all the New Mexico names. I have come to that conclusion because certain of the Rio Rancho people could have moved from New York. I don't know whether they did or not.

MR. ARKIN: We included those in our list.

THE COURT: I don't think there are enough of them to make a difference. I will read all New York names and all New Mexico names. I will not read any other names, but I will ask the jurors whether they know anybody in New Mexico, whether they have ever lived there or ever been there on a visit.

Anything else?

MR. HOFFINGER: You indicated you would advise us this morning whether the corporate defendants could reserve their opening until the beginning of the defendants' affirmative case.

THE COURT: I was told -- Mr. Rubino said he wanted to reserve.

MR. HOFFINGER: Simply the option.

I have withdrawn it for myself.

THE COURT: You don't want to reserve. Mr. Rubino.

MR. RUBINO: No.

MR. ARKIN: I am going to be opening first for the defendants.

MR. LAVINSKY: AMREP Corporation will reserve.

MR. FLEMING: No, your Honor.

THE COURT: The answer is no then. I won't split it up. I repeat what I said. I thought you all should have reserved. They are going to wait two and a half months to get the story.

MR. GLENDON: Your Honor, I believe you indicated the disposition of my opening statement severance motion the other day.

Is there an opinion yet on that?

THE COURT: Yes, it was filed this morning. I ruled that there is nothing in there that is attorney - client. You can mention it all except one, the Pluchovich letter, E, there is one letter that I thought would come in, a lawyer, a friend.

That letter cannot come in.

MR. GLENDON: That may be my Exhibit A, I don't know.

THE COURT: I think the number is E of the exhibits attached to your motion papers, Mr. Glendon, but that is the only one. Everything else is in.

All right.

MR. FLEMING: Are we going to stay in this courtroom for this trial?

THE COURT: No, 318 we have for November, December and January clearly.

As soon as they get rid of the case up there in 318 we move up. Judge Owen is charging Friday-- Thursday, he is sequestering the jury. We hope to be up there -- they have a tremendous amount of translation wires and tape recording stuff. If you recall I initiated a procedure here about six years ago, we have people who cannot understand the English language and you have a simulcast and it is done without open translation and there are thirty-one defendants up there, most of them cannot speak English so you would be tripping over wires. They have to clean all that out. They cannot take anything out while the jury is deliberating because if they come back with a question, the jury has to hear it.

MR. FLEMING: Could we speak to your Honor after the selection of the jury about rearranging the courtroom. There is not enough room as it is presently constituted.

THE COURT: We have a great problem on that. This is the IBM room and they have moved stuff out to allow us to come in and select the jury. It may be that we will put the trial over because I don't think I can do any more rearranging than exists there today. They have moved file cabinets out and what not to allow us to do this. I don't think we can do much more with it, Mr. Fleming. Let's see how we go.

MR. FLEMING: Thank you, your Honor.

THE COURT: Okay.

(In open court)

A F T E R N O O N   S E S S I O N

2:30 P.M.

(Selection of the jury continued)

(In open court)

THE CLERK: The United States of America versus AMREP Corporation, Rio Rancho Estates, Inc., ATC Realty Corporation, Howard W. Friedman, Chester Carity, Irving W. Blum, Henry L. Hoffman, Herman B. Oberman, Solomon H. Friend and Daniel Friedman.

Is the government ready?

MS. HYNES: The government is ready, your Honor.

THE CLERK: Attorney for Defendant AMREP Corporation ready?

MR. LAVINGSKY: Ready.

THE CLERK: Attorney for defendant Rio Rancho Estates, Inc. ready?

MR. ARISOHN: Ready, your Honor.

THE CLERK: Attorney for ATC ready?

MR. LAUER: Ready, your Honor.

THE CLERK: Attorney for defendants Chester Carity and Daniel Friedman ready?

MR. FLEMING: Ready.

THE CLERK: Attorney for Howard Friedman ready?

MR. ARKIN: Ready for the defendant Howard Friedman.

THE CLERK: The attorney for Henry Hoffman ready?

MS. CROSS: Ready for Henry Hoffman.

THE CLERK: Attorney for defendant Blum ready?

MR. HOFFINGER: Ready, your Honor.

THE CLERK: The attorney for defendant Herman Oberman ready?

MR. RUBINO: Ready for Herman Oberman.

THE CLERK: The attorney for defendant Solomon Friend ready?

MR. GLENDON: Ready for Solomon Friend.

(A panel of prospective jurors was duly sworn)

(Selection of jury continued)

(In open court in the absence of the prospective jurors)

THE COURT: Mr. Kaufman asked some question regarding the calling of witnesses as soon as the jury is picked we start.

I can't give you any answer better than that, Mr. Kaufman.

MR. KAUFMAN: Your Honor mentioned some time that you had to spend reviewing exhibit lists, I think, and also the --

THE COURT: I only have one problem that I see that is open that I can act on now, and that is Mr. Glendon's list, which I have here.

I gather that of the list contained in his list that was filed with me on October 28th at 4:00 p.m., there is one of the government consents and the rest you still say should come in.

Is that right?

MS. HYNES: I don't have it in front of me, your Honor.

THE COURT: I think maybe you should stay here and look at it and maybe save some time, otherwise I will go over it tomorrow afternoon.

MR. KAUFMAN: My only point is it is still going to take a little time tomorrow to pick a jury and then openings will take well into the afternoon.

What we are really looking for is guidance--

THE COURT: I can't give you any guidance. It depends. Whenever you are ready to go, I am ready to go.

Pick your jury, we swear them, you open, you put witnesses on; that's it.

I can't tell you any more than that. You have a better idea.

Why don't you just take the twelve who are sitting there and let's go to work?

MS. HYNES: Your Honor, after we pick the jury and we open, are we going to begin in this courtroom or are we going to wait for the other courtroom?

THE COURT: I am informed we are waiting for the other courtroom and if it will take too long, we will start here.

I have no other way to do it. I am not going to adjour the trial until the other courtroom gets free. I hope the other courtroom is free Monday morning.

With picking the jury and openings -- we have six alternates we have to pick when we get through with this, which is three and three preemptories on each side for the six alternates, unless you are willing to take the twelve and let's go, we are going to be here most of tomorrow picking the jury, it seems to me. But if you are not, we will open, we will start witnesses Friday if we can.

That's all.

MR. ARKIN: Your Honor, one question.

We were given today 3500 material with respect to certain witnesses, David Walters, Ted Schreier and David Kligman.

These are all people who worked with the corporation or closely associated with it.

Your Honor asked us not to speak with people once we get 3500 material.

THE COURT: That is because they were called after two days. That was our agreement.

MR. ARKIN: Your HOnor, I just want to say Mr. Schreier is one of the corporate counsel, Mr. Waldon is one of the corporate counsel, Mr. Kligman is a public relations representative and it is very difficult for the corporation or people who represent the corporation not to deal with them --

THE COURT: Not on this lawsuit it shouldn't be difficult.

MR. ARKIN: We will --

THE COURT: If you are getting a list now, that means they are going to be called on the first or second day of calling witnesses.

MR. ARKIN: I understand.

THE COURT: I can see no reason foryou to talk to those people about this trial or anything connected with this trial in the next two days or three days.

MR. ARKIN: With respect to the corporate counsel, your Honor, there might very well be. If you instruct me not, I will not.

THE COURT: I can't see anything you have to talk to him about.

If he isn't well prepared by now, he never will be.

MR. ARKIN: It is not a question of being prepared as a witness, he is going to assist in the defense.

THE COURT: He gets a little immunity at some point.

MR. FLEMING: I take it your Honor is talking about discussing the subject matter of his testimony.

THE COURT: That is right. I said about this trial. I thought I made that clear.

MR. FLEMING: I understood that. I was trying to get it a little more narrower than that.

If Mr. Arkin has to ask Mr. Schreier a question about where a particular document is or something of that sort --

MR. ARKIN: Where certain papers are.

MR. FLEMING: It has nothing to do with the subject matter of his testimony.

THE COURT: Obviously the answer is yes, he can ask those questions. But he can't talk to the witness about his prospective testimony. He should have been ready by now.

MR. FLEMING: Or forever hold his piece.

(Pause)

THE COURT: I am told there is a juror who has to be at the unemployment office tomorrow at 11:00 o'clock.

MR. FLEMING: A sitting juror?

THE COURT: No, one not picked yet.

Let us try and see if we can ge away without her. If her name is called we will excuse her.

MR. FLEMING: All right.

THE COURT: Get her name, don't pull her name out of the box, and if she gets back here at the time and she has not been called she will be part of the panel. If he name is called and she is not here, we will go on.

MS. HYNES: Your Honor, just one more statement for the record.

During the government's opening, I may refer to maps of Rio Rancho that have already been stipulated between defense counsel that will come in and I would just advise the Court. There may be one or two maps of Rio Rancho that I would refer to in the opening.

THE COURT: Why --

MS. HYNES: Physical exhibit?

THE COURT: Why ask me?

MS. HYNES: I just wanted to advise the Court if your Honor has any objection or you want a brief on the right of the government to refer to a chart or map.

Basically, it is a map, it is not a chart.

THE COURT: When it comes to referring to a map or chart in the opening, I have complete discretion in that regard, brief or no brief, but you may do it.

Secondly, when it comes to maps or charts that are in evidence at the end, obviously if it is in evidence you can refer to it.

When it comes to summation of testimony contained in charts, I, again, have complete discretion in that area.

That's all I can tell you.

Anything else?

See you tomorrow at 10:00 o'clock.

(The Judge left the courtroom)

MR. DEVORKIN: This morning, before court began, the government handed a copy of this 3500 material to counsel for all defendants:

3501, questionnaire of Helen and Martin Henry.

3502-A, grand jury testimony of Berit Hampe.

3502-A, a questionnaire completed by Martin Hampe.

3504, the grand jury testimony of David Waldman.

3505, the grand jury testimony of Theodore Schreier.

3506, the grand jury testimony of Barbara Margulies.

3507, grand jury testimony of Ronny Schleine.

3508, the grand jury testimony of Mildred Lederman.

3509, the grand jury testimony of Larry Klingma

(Adjourned to Thursday, November 4, 1976, at 10:00 o'clock a.m.)

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UNITED STATES OF AMERICA

V. 76 Cr. 644

AMREP CORPORATION, et al.

November 4, 1976
10:00 a.m.

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(In the robing room; counsel present.)

THE COURT: Who has an application?

MR. ARKIN: We have first a minor announcement and then a minor application.

The announcement is that Mr. Devorkin and I spoke this morning about the fact at 10:04 we filed a petition for a rehearing from the Court of Appeals' decision, and this morning as I came in I was served with a notice of motion to have the mandate issued forthwith, and the Court of Appeals' clerk came down and says, "My goodness, that puts us into a difficult position. What is your scheduling on openings and so forth?"

Mr. Devorkin suggested we might open this morning, which is conceivable, and both Mr. Devorkin, after discussing it, thought it might be better if the openings,

gtjb 2

because of the Court of Appeals' procedural problems, be held until tomorrow morning. That is, we would give the Court of Appeals a day --

THE COURT: Give them a chance to act?

MR. ARKIN: Give them a chance to act, your Honor.

We thought in all fairness that is the way it should be handled. That is the reason --

THE COURT: Let's go on and pick the jury and then we will worry about where we stand after that.

MR. ARKIN: I think Ms. Cross has an application to bring before your Honor.

MS. CROSS: There are two matters.

As a preliminary matter, yesterday afternoon as I was picking up my coat I saw Mr. Devorkin give to the court reporter a list of the Jenks material which he turned over.

I didn't want the record to reflect anybody else was present while that list was being given to the court reporter.

MR. ARISOHN: Let me correct that. When I saw Mr. Devorkin do that, I didn't know what was being put in the record and I went over to the court reporter and found out that Mr. Devorkin was reading a list of 3500 which was turned over to the defense. Mr. Devorkin informed me that was the customary practice in this court house to do that ex parte, and I informed Mr. Devorkin that I didn't like the ex parte procedure.

THE COURT: Mr. Devorkin, I never heard that. Where did you get that rule from?

MR. DEVORKIN: In a number of cases -- it has been a practice in some cases I have been in to read in 3500 material after the court is over for the day and it appears in the daily transcript the next day --

THE COURT: I know that, but you have opposing counsel present.

MR. DEVORKIN: In the future --

THE COURT: Never do that without opposing counsel present. You made a record against him which may not be true. I assume it is true, but you never know what can happen.

MS. CROSS: Just one other matter, your Honor. The other matter is that we got 3500 material on eight witnesses yesterday. Three of these witnesses appear on no government witness list whatsoever, three of them appear on the may call list that is to be called in the event that cross examination of other witnesses makes their testimony necessary, and only two witnesses appear on the will call list.

THE COURT: Mr. Devorkin?

MR. DEVORKIN: Your Honor, these are witnesses, if I know the ones Ms. Cross is talking about, who are documentary witnesses. They are being called to put documents into evidence, and that is what we told your Honor, as you recall.

THE COURT: This is not --

MS. CROSS: We would move to preclude them from calling those witnesses inasmuch as we have not had an opportunity to interview them prior to this time, and the second problem is with your Honor's ruling that once they have given us the 3500 material we can't talk to the witness makes it doubly difficult on us.

THE COURT: If they give you 3500 material regarding witnesses who are not on the "will call list," I will amend my order to that extent that you may talk to them.

MS. CROSS: Thank you, your Honor.

MR. LAVINSKY: Your Honor, I have two minor items.

THE COURT: If it is a documentary witness, I have no problem. But if it is not a documentary witness and they are not on the list, you are not calling them.

MR. KAUFMAN: Your Honor, that brings up a matter that just arose yesterday.

We had previously talked to an individual from the Chemical Bank, the Chemical Bank being the financial lending institution used by AMREP. That individual was unwilling to produce any documents to the government before trial.

We served Chemical Bank with a trial subpoena. That subpoena was complied with yesterday.

The documents that were turned over to us yesterday for the first time have now led us to another potential witness.

I cannot represent to the court at this moment that we know that there is another witness that we want to call, but as a result of the documents that were turned over to us yesterday we intend to talk to one or two additional people. If their testimony is relevant as it appears to be, we would then anticipate calling them, despite the fact they were not on the witness list.

THE COURT: I think when you made that determination, then you will have to come in and make a formal application as to whether you can call them.

MR. KAUFMAN: Fine. I can give the names at the earliest possible moment even before we make a determination so that defense counsel cannot complain that they didn't get enough time.

THE COURT: That is okay with me.

MR. ARISOHN: Might I inquire if you got two sets of those documents from the Chemical Bank people?

MR. KAUFMAN: One set. Is that right?

MR. ARISOHN: I was assured by the person from the Chemical Bank that when he complied with your subpoena, he would do so by delivering two sets of documents to you in court.

MR. KAUFMAN: I looked at it very briefly last night. It appears one copy.

In the event any of these witnesses are called, though, the documents will be copied and made available to all counsel.

THE COURT: Anything else?

MR. LAVINSKY: Yes. Your Honor, I have two minor items.

With respect to Juror No. 11, Sol Geller, he indicated that he is an employee of the Board of Education.

I wanted to advise your Honor that I represent the Board of Education, as a matter of fact, in a lawsuit where we are seeking to recover $115 million from the City of New York for the Board of Education.

Now, your Honor asked generally whether anyone on the jury knew me and there was a negative response. On the other hand, it is conceivable that this man is going to hear about me down at the Board at some point.

I just don't know. I just wanted to apprise them.

THE COURT: He is one of thousands of employees.

MR. LAVINSKY: I just wanted to simply mention it to your Honor.

THE COURT: I think we have covered it.

MR. LAVINSKY: The second thing that I wanted to mention was that the reciprocal discovery is proceeding.

There are about 24 documents which we consider to be privileged which we are not producing at this time.

However, should a decision be made to use those documents, we will, of course, make them available to Ms. Hynes well in advance.

THE COURT: All right.

Why don't you submit them for a preliminary ruling on attorney-client privilege.

MR. LAVINSKY: If you want me to, I will, your Honor.

THE COURT: Put them in an envelope, mark them as you have indicated them here and I will look at them over the weekend.

MR. LAVINSKY: Fine, your Honor.

THE COURT: All right.

(In open court.)

(Continued selection of the jury.)

(Continued on next page.)

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MR. GLENDON: Your Honor, the list that we gave you are documents which we feel are patently inadmissible.

Ms. Hynes has indicated to me just now that she is not going to offer the following documents:

566, 994, 58 --

THE COURT: I am afraid I don't have a 994.

MR. GLENDON: The bottom of the left-hand column.

THE COURT: Yes. That is 994.

MR. GLENDON: 587, 1051, the next column 818, 1056.

The next column, 820, 827, 828, 892, 1057 and 1080.

To respond in the spirit of equal fairness, I am not going to challenge on this ground 466.

THE COURT: Therefore, we are starting with -- 466 is what you handed up here or is that the first of many?

MR. GLENDON: That is the top one. They are in order, your Honor.

THE COURT: All right.

We then take 527.

MR. GLENDON: May I say, your Honor, that our objections generally are on the following grounds:

That the documents are patently irrelevant for either reasons such that they refer to events that never happened, plans or projections or possible things, they refer to other projects and other places, and in a few instances, a couple of instances, at least, we don't feel there is anything in the indictment to support them.

That is the general area of our objection.

THE COURT: All right.

527 is a memo from Dan Friedman, right?

MR. GLENDON: Yes.

THE COURT: To Friend indicating there would be an increase in the minimum price and that necessary filings should be made.

MR. GLENDON: Yes, in order to reflect any price increases filings have to be made with the states in which the land is registered.

Our view of this is it is simply a ministerial direction --

THE COURT: Ms. Hynes.

MS. HYNES: Your Honor, the objection is patently irrelevant, as I understand Mr. Glendon.

This memo deals with price increases which is referred to in the indictment. It shows Mr. Friend's knowledge of the prices that were being charged for the lots.

There are other documents that will show Mr. Friend's knowledge of the price that the company paid for the land.

THE COURT: This is being offered solely to show Friend's knowledge of prices?

MS. HYNES: It is from Dan Friedman, your Honor, as well. It will be offered --

MR. GLENDON: May I add, your Honor, if this memorandum came to any lawyer in the legal department, it is purely a ministerial thing and it would be perfectly innocuous and innocent transaction.

THE COURT: It is innocuous, except that it shows that Mr. Friend has been put on notice as to the price of the land.

MR. GLENDON: As it would to any other lawyer, your Honor.

THE COURT: Objection overruled.

547.

MR. GLENDON: 547, the problem I have with that, your Honor, is --

THE COURT: The only trouble is you didn't give me a 547.

MR. GLENDON: The objection to this is it doesn't seem to square with Ms. Hynes' definition of the exhibit in her exhibit book.

MS. HYNES: The exhibit I have marked as 547 is different.

MR. GLENDON: Maybe Ms. Hynes and I can work that one out, your Honor.

THE COURT: All right, 547 you will work out.

566 is out.

It brings us to 569, Keogh tax plan.

MR. GLENDON: Your Honor, this exhibit is one in a class of a proposal, some suggestion that was made never happened, it is quite clear it never happened. I think it is just irrelevant.

THE COURT: Ms. Hynes.

MS. HYNES: Your Honor, this exhibit is a memorandum from Howard Friedman to Dan Friedman, Chester Carity, Solomon Friend and David Waldman.

It relates to a Keogh plan. It shows the knowledge on the part of these defendants that they wanted to have this land sold as an investment and were at least considering having it qualified under the Keogh plan to have the home sites sold as an investment.

It is a memo that is dated in March of 1973, and it shows, your Honor, some of the defendants' knowledge that this land, in fact, was sold for investment and they were intending to sell it for investment under the Keogh plan.

The fact that it was not put into effect under the Keogh plan, I think, is very obvious from the face of the document, but the point is that these defendants wanted this land or at least were at one time considering having the land qualified under the Keogh plan as an investment, sold as an investment, and that is the purpose of that document, and it involves many other --

THE COURT: Objection sustained.

MR. GLENDON: 575 is a --

THE COURT: Is this the memorandum dated February 22, 1971 from Friend to Carity, Friedman and Hoffman?

MR. GLENDON: Yes, your Honor.

As you can see from an examination of that document, it refers to other places and other events.

El Dorado is another land development.

This is not in the same category at all as the Rainbow Lakes. They didn't hold this out as any successful or otherwise development in order to sell land in Rio Rancho. It was simply another apsect of their operations.

I think it is totally irrelevant to the issues in this case.

THE COURT: Ms. Hynes.

MS. HYNES: Your Honor, this memo -- and there are several other memos that are trip memos of Mr. Friend -- this particular memo, the reference on it is "Trip to Rio Rancho and into Phoenix."

It relates to Rio Rancho, it relates to Mr. Friend's involvement in non-legal matters of the company, affairs of the company, it relates to Mr. Friend's participation in acquisitions or potential acquisitions of other pieces of land for the company.

We have a stipulation --

THE COURT: It says, "Re: R.R.E."

MS. HYNES: Rio Rancho Estates and Phoenix.

THE COURT: Where is there, aside from this, where it refers to Rio Rancho?

MS. HYNES: Your Honor, in the first paragraph it talks about the Mexico legislative committee and bills that are pending which would affect subdivisions.

THE COURT: It just says "El Dorado."

MS. HYNES: No, and all developments in general.

THE COURT: And "our El Dorado."

MS. HYNES: In particular.

THE COURT: Objection sustained.

MS. HYNES: That is the first page of that memo.

THE COURT: That is the only page I have.

MS. HYNES: It is a three-page memo.

THE COURT: Where is it? I only have one page.

MR. GLENDON: That is all we got.

MS. HYNES: Your Honor, on the third page -- and I will hand it to you --

THE COURT: Show it to Mr. Glendon. He obviousl never saw it.

MS. HYNES: I don't think he has never seen it -

THE COURT: He says he never saw it and his assistants say they never saw it.

(Handing to Mr. Glendon.)

MR. GLENDON: It is about half illegible, but it keeps making references to El Dorado --

THE COURT: Show Mr. Glendon anything in there that refers to Rio Rancho.

MS. HYNES: I refer him to the last page, the last paragraph, which refers to Mr. Friend's involvement in the acquisition of land in 19 -- whatever the date of that memo is, the second acquisition of land at Rio Rancho.

MR. GLENDON: I don't think it establishes anything, your Honor.

I will hand it up. I can't see where it relates to anything.

THE COURT: Page 3, the last paragraph?

MS. HYNES: Refers to a BLM closing. BLM will be connected up through other documents as an acquisition of land --

THE COURT: You don't think I can read this, do you?

MR. KAUFMAN: Your Honor, it is the typing in the middle of the page, the very light printing, I think --

THE COURT: Is not the last paragraph, it is in the middle of the page?

MR. KAUFMAN: That's correct, your Honor. It refers to the Montoya BLM land closing.

THE COURT: What is BLM land closing?

MR. KAUFMAN: That is Bureau of Land Management.

It relates to additional land that was added onto Rio Rancho in 1969 or 1970 at the time that Rio Rancho expended from 56,000 --

THE COURT: What is the relevance of those two sentences?

MR. KAUFMAN: It shows Mr. Friedn's knowledge of the land acquisitions at a time when customers of Rio

Rancho were being told we are being sold out, once we are sold out you will be able to resell your land.

THE COURT: The argument being made that they were buying more land at the very time? Is that the argument?

MR. KAUFMAN: Yes, your Honor.

MR. GLENDON: Your Honor, this, as I understand what they are referring to, is some land that was -- we are talking about 1969.

THE COURT: Let me read it to you.

"Saturday, 2/20. Spent day" -- I gather it being 2/20/71 -- "Spent day with Walsh going over Montoya BLM closing papers. Certain reservations in easements previously unknown must be omitted before we can close. Walsh and Head say they will be omitted and are planning to close next week."

The government says they will show that BLM refers to your additional purchase of land for Rio Rancho. That's what they say.

MR. GLENDON: But what he is doing and what it shows, if it shows anything, is simply that he has gone to a title closing, your Honor.

THE COURT: And knew they were acquiring more land at the time they were telling their purchasers that,

qtjb 10

"We are finished."

If a proper foundation is laid, Mr. Glendon, I will allow in only that paragraph on page 3.

MR. KAUFMAN: Your Honor, may I make one further presentation with respect to that whole document?

On the second page, there is lengthy discussion by Mr. Friend about potential land acquisitions in other locations, both in this country and overseas.

Part of the sales presentations, when the Rio Rancho sales representatives would talk about AMREP Corporation and its history, they would say, "We are responsible for developments in other places. However, now our sole emphasis is on Rio Rancho."

At the same time that customers at these dinners are being told that AMREP is focusing entirely on developing Rio Rancho, in truth and fact, AMPEP officers are going out and considering buying land in Arizona, in Australia for other developments.

THE COURT: You can have it back. Just that paragraph.

MR. GLENDON: Your Honor, I will pass 577.

THE COURT: Does that mean there is no objection?

MR. GLENDON: No, not on the grounds of patent irrelevancy.

THE COURT: All right.

578.

Is that the January 7, 1972 --

MR. GLENDON: Yes.

Your Honor, this objection here is or relates on its face to outside builders who might be constructing homes there and --

THE COURT: In California?

MR. GLENDON: Yes. In the California section of unit 16 there is a block of land in unit 16 which is called the California section, and it refers to providing the obligations to hold harmless.

A, I don't know the relevance whatever to what may be problems with outside builders of homes and, secondly, your Honor, unit 16, there is no question about it, the roads are all paved there in the company owned lots.

THE COURT: Why should this come in?

MS. HYNES: Your Honor, in the third paragraph, the last sentence, which begins, "This release language" --

THE COURT: Is similar to the rider.

MS. HYNES: Would be similar to the rider that the purchaser signs acknowledging that no representations, promises or commitments pertaining to paved roads have been made by Rio Rancho Estates.

This shows -- well, let me say first that the film and the promotional material that was used by the company represents that the company will provide paving, and this shows --

THE COURT: But you don't need this to prove it, do you?

MS. HYNES: But this shows Mr. Friend's knowledge that, in fact, he is having customers sign and when they get to the point of actually having their house built, no representation was made with respect to paving.

THE COURT: I know that. But this doesn't prove it. I assume you are going to have a customer who signed it, aren't you? Isn't that the way you are going to get the rider in?

You don't need this.

MS. HYNES: Your Honor, it is important to show Mr. Friend's knowledge of that rider.

THE COURT: Objection sustained. Objection sustained.

MR. GLENDON: Your Honor --

THE COURT: What number is this, 577? These don't have numbers on them.

578?

gtjb 13

MR. GLENDON: Yes, that was 578.

The next one is 579, your Honor, a memorandum of December 17th.

THE COURT: All right. We are up to 579.

MR. GLENDON: Yes, sir.

THE COURT: Is that the January 22, 1973 memo?

MR. GLENDON: No. It is December 17, 1970.

It should be in the pile.

THE COURT: All right, I have it.

MR. GLENDON: This is a memo regarding a trip to Santa Fe, New Mexico.

THE COURT: It is El Dorado, Trinity Life Insurance.

What is the relevance of this, Ms. Hynes?

MR. KAUFMAN: Your Honor, again, paragraphs 6 and 7 on the second page refer to the land acquisitions, BLM King closing, King option closing.

THE COURT: What else?

MR. KAUFMAN: And paragraph 4, your Honor, in general focuses on AMREP Corporation's relationship with the New Mexico state legislature.

MR. GLENDON: Your Honor, I find that paragraph particularly objectionable. There is no -- I don't know that there is any impropriety or anything wrong in discussing legislation. Apart from that, there is nothing in the indictment which suggests that there is any claim that there is something improper or wrong --

MR. KAUFMAN: I am not suggesting that.

THE COURT: What are you saying?

MR. KAUFMAN: Your Honor, it mentions Horizon's people in this paragraph. It shows AMREP or Mr. Friend's knowledge of the Horizon Corporation and inferrentially the Horizon development.

THE COURT: How can he miss it? It's right in front of his nose, isn't it?

MR. KAUFMAN: Part of the indictment charges that AMREP knew there were other places for the growth of Albuquerque to go other than Rio Rancho, and one of them was Horizon --

THE COURT: Objection sustained.

MR. GLENDON: 580, your Honor.

THE COURT: What is 580?

MR. GLENDON: That is the memorandum dated September 25, 1972 from Mr. Friend to Mr. Friedman.

THE COURT: Phoenix trip? That is Arizona?

MR. GLENDON: Yes, sir.

THE COURT: What is the relevance, Mr. Kaufman?

MR. KAUFMAN: There are matters in here, your

Honor, that you have already excluded, so I will pass over those to paragraph 5 on the last page.

It involves Mr. Friend's discussions with Mr. Hugh Hood, who is --

MR. GLENDON: No, excuse me.

It says, "I was unable to get Albuquerque to discuss the following matter."

MR. KAUFMAN: I understand that. But it shows matters that Mr. Friend intended to discuss and --

THE COURT: But never did?

MR. KAUFMAN: On this trip at least. But it shows Mr. Friend's knowledge and involvement in the nuts and bolts of the business of Rio Rancho, not just acting as an attorney rendering legal advice, but he wants to know why a water well failed, he was discussing Sennex, which was an AMREP plan to organize Rio Rancho into a municipality, he is talking about platting, he is talking about a supplemental budget of $100,000.

These are matters that somebody --

THE COURT: He was an officer and director at the time, wasn't he?

MR. KAUFMAN: Yes, your Honor.

THE COURT: You don't need this, then. The mere fact he is also a counsel, he has all the liabilities of an officer or director and knowledge of what the corporation is doing.

MR. KAUFMAN: I know. But we anticipate Mr. Friend's position will be, "I was the lawyer, I rendered legal advice, I didn't do anything else in the corporation, I was its counsel."

THE COURT: If necessary you can use it on rebuttal.

MR. GLENDON: The objection is sustained for the present purpose, your Honor?

THE COURT: Yes.

MR. GLENDON: 582, your Honor, is another similar document. That is the memorandum of April 30, 1972. It has a variety of things, including references to the garbage dump at Rio Rancho.

Most of it is --

THE COURT: Is that the same remark here, Mr. Kaufman?

MR. KAUFMAN: With respect to --

THE COURT: Number 6, the garbage dump.

MR. KAUFMAN: No, your Honor, we are not referring to the garbage dump at all.

THE COURT: What are you referring to?

MR. KAUFMAN: We are referring to, for example, paragraph 12, which shows Mr. Friend's knowledge of the tours that were conducted from the New York and New Jersey area of home owners to Albuquerque.

I believe you heard one of the prospective jurors today tell you they found out they couldn't get a refund unless they went to Albuquerque within six months --

THE COURT: No, she didn't say within six months. She said unless they traveled to Albuquerque.

MR. KAUFMAN: It had to be the first six months of purchase.

THE COURT: I am sorry, she didn't say that. You are quoting the prospective juror and I am saying you are incorrectly quoting her.

MR. KAUFMAN: To supplement that, it had to be done within six months.

The company sponsored company tours to go to Albuquerque and during these tours efforts were made, one, to solidify the original sale and, B, to sell these people additional land.

Mr. Friend shows his knowledge of those tours when he talks about them in paragraph 12.

Paragraph 11 talks about another plan of the company, a fly and buy plan, to get people to Albuquerque and to make sales. A number of these paragraphs show Mr. Friend's involvement in construction on the property with an industrial park, with the fairways project, which I believe were condominium units on the property.

Those matters, again, show Mr. Friend's involvement in the inner workings of the company.

MR. GLENDON: Your Honor, I don't understand that there is any charge of fraud in the construction of any property here and I think that is totally beyond the --

THE COURT: I think paragraph 12 comes in.

I think 11 comes in.

Those are the only two I can see coming in.

Exhibit 582, paragraphs 11 and 12.

MR. GLENDON: Your Honor, the next one is 584, a memorandum of March 29, 1973.

I think it generally has the same obvious objections as to non-Rio projects or non -- immaterial and irrelevant matter to this indictment.

THE COURT: The only thing I see on this is the handwriting "Or R.R.E." on paragraph 7C.

MR. GLENDON: Yes. That would be --

THE COURT: The shopping center.

MR. GLENDON: Yes. But I don't see any relevance to that, your Honor, and I would like to, if I may, just discuss that a moment.

THE COURT: Go ahead.

MR. GLENDON: Those are references to various building projects out at Rio Rancho.

The fact that he is interested in or concerned with the fulfillment of the development out there is just not involved here.

This is what they are doing, they told the people they would do, they are building a community out there, and he is trying to help fulfill those promises.

It has nothing to do with sales.

THE COURT: Who is Sweet Popa Givaney?

MR. GLENDON: It is a restaurant. Good Italian food.

THE COURT: Objection sustained on this one.

MR. KAUFMAN: Your Honor, at least will we have the right to use this in rebuttal in case they make the argument that he was just legal counsel?

THE COURT: Yes.

MR. GLENDON: Your Honor, the next exhibit is 586.

This is a memorandum of November 20, 1972.

THE COURT: No. 585 is next, October 26, 1971.

What refers to Rio Rancho in here?

I see El Dorado, Golden West Condominium.

I don't see anything referring to -- oh, yes.

What is the relevance of this, Mr. Kaufman?

MR. KAUFMAN: Your Honor, with respect to paragraph 9, there is reference to six sections of state land that AMREP was considering buying and adding on to Rio Rancho Estates.

As it turns out, they did not buy it and add it on, but they did receive an appraisal of that land in connection with their considering the land, and the appraisal, I think, came out to be $178 an acre -- $165 an acre at the same time that they were selling the land for thousands of dollars an acre and saying they were selling it at low markup and it shows --

THE COURT: You are going to get that appraisal in some other way, aren't you?

MR. KAUFMAN: That shows Mr. Friend's knowledge of the sections of the state land.

MR. GLENDON: No.

This, again, never happened. This is one of the many things that they are trying to shove in here that relate to non-issues about non-events.

I think we have already been over the question --

I think your Honor ruled earlier, if I can recall correctly -- if you make a widget for a dollar and you sell it for $10, the original cost isn't important.

THE COURT: No. This depends on the representation that was made.

As I understand it, there was a representation made that there was a low markup and that the property was only worth $165 and you are selling it for $1,000. That is not a low markup.

MR. GLENDON: This does not, in my view, your Honor, indicate any such knowledge.

THE COURT: I think your appraisal which you are going to get in some other way would show that, won't it?

MR. KAUFMAN: The appraisal would show the value, but the appraisal won't show Mr. Friend's knowledge of those six sections of state land.

THE COURT: Where does this show that he knew what the appraisal was?

MR. KAUFMAN: It doesn't, your Honor, but --

THE COURT: Objection sustained.

MR. GLENDON: Your Honor, the next exhibit is 586.

The first item on there -- first of all, there

qtjb 22

are many items on there that don't relate to Rio Rancho at all.

The first item, I might discuss just for a little background.

Sennex was a proposal brought to Rio Rancho by some people who apparently were in the business of organizing municipalities.

Rio Rancho was not and is not yet an organized political community. It has no municipal life. People came around -- there may have been others, but this was a proposal by some people who do this sort of thing to organize Rio Rancho as a community.

Again, this never happened. It never happened for a variety of reasons. And I think it is just simply irrelevant to the case.

MS. HYNES: Your Honor, during the period of 1971 through 1973, at a time when the company was representing to purchasers that the company was going to provide this master plan community and improve lots, the company was actively making arrangements to shift the obligations of providing utilities to a municipality.

The plan was that they were going to put company employees, 150 company employees in houses in a certain area on the property, have the employees vote to incorporate and then annex the developed part of the property and shift the burdens to those property owners and residents.

In paragraph (J) of the first page in this memo from Mr. Friend to Howard Friedman and to Chester Carity, he says, "The important problem" -- and he is referring to the Sennex proposal -- "is to take us off the hook on the exchange program and to prevent adoption by city in future of new zoning and subdivision regulations which would haunt us and make development impossible.

The point here is that Mr. Friend had knowledge - the plan did not go through, but the point is that Mr. Friend had knowledge that this plan was in the offing, he was an active participant in this plan and the plan was for the company to start bailing out.

This is important --

THE COURT: Doesn't that happen in all subdivisions?

MS. HYNES: No, your Honor. It depends what the representations are.

THE COURT: Let's assume we have a perfectly honest sale of subdivisions -- I am not saying this one is not, but you say it's not so I will accept your position.

Eventually, the developer sells out and he walks away and the people who are left have the problem of creating a viable municipal organization to take care of its needs.

When it is done without becoming a governmental unit, they still have the problem.

What is wrong with that?

MS. HYNES: What is wrong with that is what the representations were by the company with respect to what their obligations were, what their intentions were and what they were going to do.

The company was continually representing to purchasers at these sales dinners that it was a large corporation, that its interest was to stay with that community, that it would stay with that community and there wasn't going to be this kind of bail-out, that the company had the obligation and the financial resources and was going to continue in that community.

At the same time they were making that representation, they were, over a period of three years, trying to make plans by doing it through the corporate employees to set up this municipality and to get them off the hook on these obligations.

THE COURT: If you produce evidence to that effect, then with a laying of a foundation, I will let it in. But without that foundation that you have just outlined to me, I will not let it in.

MS. HYNES: I understand.

MR. GLENDON: Your Honor, may I be heard briefly on this question?

THE COURT: We haven't ruled ultimately on it, Mr. Glendon.

MR. GLENDON: You have not?

THE COURT: No. I said if she produced the foundation for letting this in, it will come in. It will depend on what the representation was that was made.

If the proof shows that such a representation was made --

MR. GLENDON: That is the point I would like to be heard on if I may.

THE COURT: I can't argue that now until I hear the proof. This is going to be tried in front of the jury. I don't want to keep going over all the proof.

She has made a representation that she will produce such proof. If she does -- so all I am saying, with a proper foundation 587 will come in.

MR. GLENDON: May I just point out, before we leave this subject, there is nothing in the indictment that I can find that would support any issue on this subject.

THE COURT: No, the proof, all the proof doesn't have to be set out in the indictment.

MR. GLENDON: No. But there has to be some kind of an issue.

There is no charge in the indictment that AMREP intended to walk away from this development.

THE COURT: Let's see what the proof is.

This will not come in unless that proof comes from the stand.

MR. GLENDON: May I be heard at that time on this question?

THE COURT: Oh, yes, of course.

The next exhibit is 592.

MR. GLENDON: 587, your Honor, is another memo of August --

MR. KAUFMAN: That is out, I believe.

MR. GLENDON: Excuse me.

592, your Honor, is a -- I don't understand this at all.

This is a memorandum with a newspaper clipping attached. I don't know how they can get that in, but I just want to make it clear that we object.

It is at least double hearsay if not triple.

MR. KAUFMAN: It is a memo from Lawrence Klingman, who is AMREP's public relations man, to Howard Friedman and Chester Carity.

The memo is very short saying, "I don't know whether you have seen this. I think Sol ought to check with me on the impact in print of statements which he expects to make at meetings which reporters cover."

The attached article to that memo includes Mr. Friend's statement that, "He said it would take many years to develop these communities and said that many of their land owners are purchasing" --

THE COURT: This is a newspaper reporter?

MR. KAUFMAN: Yes, your Honor.

THE COURT: How are you going to get the newspaper --

MR. KAUFMAN: We are not offering the newspaper article for the truth, we are offering it as part of the memo that was sent to Mr. Friedman --

THE COURT: Supposing it was? This is merely a publicity man, and they all do this, Mr. Kaufman. They want to make sure that they have a finger on what is going on.

I have seen this in my private practice with public relations men constantly, "Don't make statements without checking with me first. I resent it and if you don't do it I will quit," and all of the rest of the nonsense.

All this says is the publicity man saying, "Nobody should make a statement without clearing it with me."

That's all he says.

MR. KAUFMAN: But he is not saying it to the person who made the statement, Mr. Friend, he is saying it to the people who purportedly control the corporation -

THE COURT: He says, "Don't let anybody talk to anybody without checking with me first."

What is wrong with that?

MR. KAUFMAN: Because of what it says.

THE COURT: You do want the things underlying the thing for the truth of what it says?

MR. KAUFMAN: No, for the knowledge that it puts on --

THE COURT: Sustained.

596.

MS. HYNES: This memo really sets out in more detail --

THE COURT: Is this the Keogh plan?

MS. HYNES: The memo which he attached, which is from David Waldman, an attorney, sets out the idea in more detail.

The second paragraph --

THE COURT: I have trouble reading it.

MS. HYNES: My copy is not that great, either, your Honor.

THE COURT: How can I know what it says?

MS. HYNES: I will give you my copy.

THE COURT: Incidentally, speaking about that, where is this material you want me to listen to on a tape recorder?

MS. HYNES: I think we are making arrangements for the equipment, your Honor.

MR. KAUFMAN: We were going to ask you when we should send it up to your chambers, either this evening or tomorrow morning.

THE COURT: If you have it this evening, send it up.

Have it there this evening so I can listen to it tomorrow morning.

All right, let's get back to this.

I can't read this.

MS. HYNES: Okay, I will give you my copy (handing).

The paragraph that deals with using it as a sales device, training salesmen, tell customers about the benefit of Keogh plan investment.

THE COURT: Were such plans ever put into effect?

MR. GLENDON: This is the same thing we had before on this Keogh plan.

THE COURT: Same ruling.

MR. GLENDON: 597, your Honor -- that is the same as 466, your Honor. We will pass that.

THE COURT: It is the same thing, isn't it?

MR. GLENDON: Yes, it is the same thing.

MS. HYNES: This is the original signed copy.

THE COURT: That's out.

MR. GLENDON: We only need one of them, I hope.

THE COURT: 597-A.

MR. GLENDON: 597-A is a letter of February 1, 1973.

MS. HYNES: This relates, your Honor, to the 466 and 597, which is the duplicate, and you said you had no objection to 466.

MR. GLENDON: Okay.

THE COURT: All right. 628.

MR. GLENDON: Your Honor, may I just note, I

gtjb 31

think I do have to object.

That project never happened, either.

We will go. That's all right.

THE COURT: 628.

MR. GLENDON: 628, this is a duplicate exhibit of Exhibit 342, I believe.

MS. HYNES: No, it's not, your Honor.

This is a script -- I don't have 342 here, but this is a script. It says, "Henry Hoffman marked copy."

There may be another script that has been marked that says, "Solomon Friend's marked copy," but this is Henry Hoffman's marked copy.

THE COURT: No. This is SHF marked copy.

MR. GLENDON: Then Mr. Glendon has the wrong exhibit, because this is Exhibit 628.

THE COURT: Show it to Mr. Glendon.

MR. GLENDON: I have an exhibit that says 628, but --

MS. HYNES: Mr. Glendon, I didn't set up your exhibits for you.

MR. GLENDON: Maybe you should have.

MS. HYNES: Maybe.

MR. GLENDON: All right, we will pass that one.

THE COURT: 629, Hoffman memorandum dated

December 13, 1971.

MR. GLENDON: That one we would withdraw our objection.

THE COURT: All right.

632, Henry Hoffman memorandum March 15, 1972.

MR. GLENDON: We will withdraw our objection of the patent irrelevancy, your Honor, reserving our rights, however.

THE COURT: What is 732?

Here is its. Report on trip to Rio.

Whose report is this?

MS. HYNES: This is a report by Mr. Friend. The second page has his initials SHF.

MR. GLENDON: I am not agreeing with that at the moment. I don't know whether it is or not, but apart from that, this just represents his activity as a lawyer. He went to a closing.

THE COURT: This is on the question, isn't it, of buying the additional property?

MS. HYNES: Yes.

MR. GLENDON: Yes.

THE COURT: I will let it in.

818 is out, I gather?

MR. KAUFMAN: Yes, your Honor.

qtjb 33

THE COURT: And 1056 is out?

MR. KAUFMAN: Correct.

THE COURT: And 820 is out?

MR. KAUFMAN: Correct.

THE COURT: We are up to 826.

MR. GLENDON: This is a memorandum which shows Mr. Friend advising his clients about new regulations and suggesting that the advertising should be examined in the light of the regulations.

THE COURT: Ms. Hynes.

MR. GLENDON: It is exculpatory of Mr. Friend and I don't know why they are offering it.

THE COURT: We will find out from Ms. Hynes.

MS. HYNES: If that is Mr. Glendon's view, I don't know why he objects to it.

THE COURT: Because it is irrelevant.

MS. HYNES: Your Honor, this is a memo of 1973 from Solomon Friend and he states -- it is relating to HUD regulations.

In September of 1973, HUD issued proposed regulations dealing with interstate land sales and they eventually took effect in December of that year.

The second sentence in the first paragraph says, "Many of the provisions are most significant and can apply to our advertising presently in use, as well as sales practices."

THE COURT: Yes.

MS. HYNES: Then when you look at the regulations which are attached -- and, by the way, this was a document that Mr. Friend produced in the grand jury -- if you look at the second page of those regulations --

THE COURT: I don't havethem, I just have one sheet.

MS. HYNES: Okay.

Let me just make a reference before I hand it up, your Honor.

There are check marks on the second page.

For example, one of the check marks which he is saying relates to the company's advertising is that, "Advertising shall not make comparison of land values unless it is clear who is making the comparison and the comparison is relevant and fair."

THE COURT: All right. That is what HUD says.

MS. HYNES: I know. But, your Honor, the point is that Mr. Friend -- this is evidence of Mr. Friend's knowledge that the HUD regulations that have been enacted will apply to advertising and sales practices of AMREP.

THE CORUT: What do you need Mr. Friend's viewpoint for that?

MS. HYNES: The point here is the defendants are going to argue, where is the proof connecting Mr. Friend to this? Where is the proof connecting Mr. Friend's knowledge to this?

If your Honor is prepared to charge that the fact that Mr. Friend was an officer and a director and a vice president that is sufficient, then I will have no problem with trying to get these documents in.

But short of that --

THE COURT: Here is a lawyer saying, "We have regulations which require us to review our material."

What is wrong with that?

MS. HYNES: It shows his knowledge of how they were selling it, what the sales practices were and what --

THE COURT: That doesn't prove it at all. It just says, "This is what we have to do now."

It doesn't prove he knew what the practices were before.

MS. HYNES: It says, the covering memo, "Many of the provisions of the regulations he is referring to are significant and can apply to our advertising presently in use as well as our sales practices."

THE COURT: Sure it can. But that doesn't mean what is being done is wrong.

Objection sustained.

MR. GLENDON: If she has to strain to get a case against Mr. Friend like that, your Honor --

THE COURT: Objection sustained.

I have to leave. People are waiting for me upstairs.

That takes us through 826.

We will do the rest tomorrow.

MR. GLENDON: Your Honor, may we at that time bring up Mr. Friend's testimony in the grand jury as to what may or may not be used in the light of the Court of Appeals' ruling?

We do have additional objections apart from --

THE COURT: I understand that.

I can't figure out from the papers so far to find out what was objected to.

The notice of appeal doesn't indicate it.

MR. KAUFMAN: Your Honor, we have told your law clerk we will provide your Honor with the list that we handed up to the Court of Appeals specifying --

THE COURT: Didn't you show it to the defendants before you filed it?

MR. KAUFMAN: Yes. Mr. Glendon has a copy of that.

THE COURT: All right.

(Adjournment taken to November 5, 1976, at 10:00 a.m.)

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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

November 5, 1976
10:00 a.m.

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(In open court; jury present.)

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THE COURT: We are having housekeeping problems.

The courtroom that we are now in is not the courtroom we are going to use for the trial. We have only three large courtrooms in the court house and obviously this trial is going to need a large courtroom.

This courtroom is being used for another purpose, what is known as the trial of the IBM case, and it is overflowed so far that we don't have a jury room where you can leave your clothes and where there are lavatories, nor does it have a witness room.

We hope our regular courtroom will be available Monday morning. It is presently being used because there is a three and a half month trial we hope ending today and will not spill over until Monday.

gtjh 2

We were only going to have the openings today and witnesses starting Monday, but I wanted to have you in some sort of comfort where you could leave your belongings and if we had a recess you would have some place to go.

If we have a recess here, the only place you can go is out in the hall.

We found a courtroom upstairs, Room 705, which will suffice for today's proceedings and where you will be more comfortable. We are going to ask you to go upstairs. We have a few things we have to do here anyhow before we start and I think you would be much more comfortable in Room 705.

So, if you will follow the clerk, he will take you up there.

MR. FLEMING: Your Honor, may we come up for a moment before the jury leaves?

THE COURT: Yes.

(At the side bar.)

MR. FLEMING: Is No. 6 missing?

THE COURT: Yes, we know that. She hasn't come in yet.

You are not doing anything. If she is still missing at 11:00 --

MR. FLEMING: I didn't want her sitting here in the courtroom.

THE COURT: No.

(In open court; jury not present.)

THE COURT: I think the first thing we ought to do is take care of that problem of the openings which we discussed yesterday.

Mr. Fleming said he wanted to think about it overnight. What have you thought, Mr. Fleming?

(Continued on next page.)

MR. FLEMING: Your Honor, we looked for cases and we researched the canons of ethics, and we find nothing one way or another.

Our position is that, as I described it yesterday, absent a conflict of interest, the three individuals came to a single law firm and asked to be represented by separate individuals in that law firm, that that would be permissible.

And there is only that that we are asking.

THE COURT: I don't have to reach that problem in this case, Mr. Fleming.

I was presented with a situation where two individuals came to your law firm and asked you to represent them and they were brought into court and said there was no conflict between them, you said there was no conflict between them and no conflict between you, Mr. Fleming, representing both of them, and the same is true of Mr. Arkin.

We then proceeded on that basis so that everybody knew that you represented two of the defendants and Mr. Arkin represented the other two.

We then reached a stage Wednesday morning, five minutes before we were to come in and pick the jury, the jury was waiting in the hall waiting to be empaneled, and

Mr. Lavinsky's firm, the Proskauer firm, had represented the three corporations for an entire year actively, I was asked to allow a substitution at that time, five minutes before we picked a jury.

I was worried about a conflict of interest and I approved the substitution based on a representation there was no conflict.

Sometime during the morning I saw on my desk up here the formal substitution of attorneys, Curtis, Mallet, Prevost for the Proskauer firm.

I never thought it was to give another opening. If I knew so, I never would have approved the substitution of attorneys.

There are very able counsel involved in this case on all sides for all defendants who have lived with this case for a year and I would not allow a substitution five minutes before we pick a jury.

So I will continue the approval if you want to represent the corporation. If not, they go back to Mr. Lavinsky.

MR. FLEMING: We do not want to continue on that basis.

THE COURT: Mr. Lavinsky will open for all three corporations.

MS. CROSS: Your Honor, the statement you just made about substitutions five minutes before the trial is not true, however, of Mr. Hoffman.

It was quite a while ago that we asked for a substitution --

THE COURT: And as I indicated yesterday was for the purpose of summations only.

MS. CROSS: Your Honor, Mr. Hoffman would not have -- Mr. Hoffman feels very strongly that he should have individual representation in this case.

THE COURT: Why didn't you say that at the time I limited the substitution to you to sum up?

MS. CROSS: The substitution we understood at that time was to give Mr. Hoffman individual representation.

THE COURT: It was not, and the record shows I said for the purpose of summation. It's too late to do that now. Mr. Hoffman had plenty of time to get other counsel.

All right. That takes care of that.

MR. ARISOHN: Your Honor, with respect to Rio Rancho Estates, I understand that your Honor has ruled that I may not open for Rio Rancho Estates, whether the Arkin law firm --

gtjb 630

THE COURT: If Rio Rancho Estates wants that, Mr. Lavinsky will open for the other two corporations.

There is only going to be one opening, there is only going to be one lawyer cross examining for those three or presenting proof for the three defendants represented by the Arkin law firm, the one presentation of the evidence and one cross examination for the law firm representing the Curtis, Mallet, Prevost firm.

MR. ARISOHN: But there will be three summations, your Honor?

THE COURT: I said I would allow that.

MR. ARISOHN: Thank you, your Honor.

THE COURT: And I did that out of an abundance of caution, as I indicated on the record yesterday. That doesn't mean I was going to allow this proliferation all through the trial.

(Pause.)

THE COURT: Mr. Glendon, do you have a copy of the communication you sent me with the exhibits listed on it?

My efficient staff has mislaid it with my notes.

MR. GLENDON: I have another copy, your Honor.

THE COURT: I gather we had three or four left on the right-hand column.

MR. GLENDON: Yes. That is my working copy, so if your Honor would call them out or somebody else would, I would appreciate it.

THE COURT: There are only three left?

MR. GLENDON: Yes.

(Pause.)

THE COURT: Hold it, I have it.

You may have your copy back (handing).

MR. GLENDON: I believe the next one, your Honor, is 830.

THE COURT: 830.

MR. GLENDON: The problem with that, your Honor, is essentially we feel that is an exculpatory document.

THE COURT: Is 830 --

MR. GLENDON: That's a --

THE COURT: Just a second.

MR. GLENDON: That is December 23rd.

THE COURT: This is a memorandum from Mr. Friend, to three people dated December 23, 1971?

MR. GLENDON: Yes, your Honor.

We feel this is essentially an exculpatory document that we would probably put in on our case. I would rather have it put in in my case than the government.

THE COURT: What do you want it for, Ms. Hynes?

gtjb 9

MR. KAUFMAN: Your Honor, number one, I think by Mr. Glendon saying he wants to put it in it dismisses the argument.

THE COURT: That is obviously not a good reason. I want to know why you want it.

MR. KAUFMAN: Well, it shows Mr. Friend's knowledge of the promotional films that were shown at the dinner. It shows that he was involved in reviewing the scripts.

THE COURT: Don't you have that in the grand jury testimony of his?

MR. KAUFMAN: To an extent.

I mean, I have to go back and review it, your Honor, but not to the extent that this memorandum sets it out.

This memorandum was also sent to Hank Hoffman and Chester Carity, which is not in the grand jury testimony.

Mr. Glendon may think it is exculpatory. We obviously think it helps the government's case and that's what we argue about.

THE COURT: I will let it in. I think I will let it in.

MR. GLENDON: The next one --

THE COURT: 891, a memorandum dated February 25, 1971 from Mr. Friend to four named people.

MR. GLENDON: Your Honor, this appears to relate to contracts with various employees.

THE COURT: This one says he wants to have a conference.

MR. GLENDON: To explain provisions in --

THE COURT: That is out.

MS. HYNES: Your Honor, can I be heard on that?

THE COURT: If you want to.

MS. HYNES: There is an attachment to that exhibit. I don't know whether Mr. Glendon handed up the attachment.

Basically, the exhibit relates to changes in the purchaser contract that were used to sell these lots to customers.

THE COURT: I am sorry, I have two sheets of paper, but they are the same thing.

MS. HYNES: Then you don't have the correct exhibit, your Honor.

THE COURT: I don't have any attachment.

Show them to Mr. Glendon.

MR. GLENDON: I am sorry, your Honor, we did not have a complete document in the file.

THE COURT: I only need one of them.

MR. GLENDON: But there is an attachment, apparently.

Is that correct?

MS. HYNES: Yes, there is.

MR. GLENDON: Let me see if it is the same thing.

MS. HYNES: Yes (handing).

MR. GLENDON: May we move on and let me look at this? I didn't have this in our exhibit file and I would like to consider it.

THE COURT: The attachment?

MR. GLENDON: Yes.

THE COURT: Why don't I give you the whole thing back (handing).

That brings us to 892, which is out, I gather.

987, which is a memorandum from a Mr. Snow to Mr. Friend, dated August 9, 1972.

Yes. What is the purpose of this, Ms. Hynes?

MR. KAUFMAN: This is a memo from an individual from Bill Snow to Charles Friend talking about Mr. Small's attention at a New York seminar involving development concepts and land use seminars.

The last sentence or the first paragraph talks about Mr. Small's frustrating experience because we in

AMREP appear to be so very far from using the expertise which is available.

THE COURT: What is inculpatory about that?

MR. KAUFMAN: Rio Rancho is again presenting to the public that it is a scientifically planned community, at the same time employees of the company are admitting to the company they are not using the expertise which is available.

THE COURT: The next point, Mr. Kaufman.

MR. KAUFMAN: That is the point.

THE COURT: I read the whole document. If that's it, that's out.

MR. GLENDON: If your Honor will indulge me just a minute on that previous exhibit.

THE COURT: Yes.

(Pause.)

MR. GLENDON: Your Honor, does your Honor have a copy of 891?

THE COURT: You just took it back from me.

MR. GLENDON: All right, your Honor (handing).

I think some more clarification by the government is in order with reference to this document 891.

The way the document is presented to your Honor, they are stapled together, but you will note the first document is a memo of February 25, 1971 and there is no reference there in that document to any attachments.

You will see that the attachments are dates subsequent to February 25th, except for one document, the bottom one, which is dated February 24th.

I don't see, if you look at the document, the February 24th document --

THE COURT: What is the relationship?

MR. GLENDON: I don't see if there is much, if any, relationship.

MS. HYNES: Your Honor, I stand corrected.

891 is a group of documents. They are not stapled together, but they are a group of documents which relate to the changes in the purchase contracts relating to the exchange provision.

The first document, which is dated February 25, 1971 --

THE COURT: Let us get one thing straight.

891 is unrelated to the attachments, isn't it?

MS. HYNES: 891 does not specifically refer to the attachments.

891 is a group of documents which relate to the same subject matter, which is a change in the purchase contract.

We have to deal with them separately.

MR. GLENDON: I am objecting, your Honor --

MS. HYNES: We will mark them as 891, 891-A, B and C so that that is clear.

THE COURT: 891 is out.

MS. HYNES: Your Honor, if you will let me explain --

THE COURT: It is meaningless.

MS. HYNES: Your Honor, it is not meaningless if you deal with the other documents.

Mr. Friend, in this memo, is talking about basic changes in the --

THE COURT: It says, "I would like to have a conference to explain some changes." That's all he says.

MS. HYNES: Okay.

THE COURT: That is out.

MS. HYNES: Your Honor, let me explain the next document if you will just bear with me one moment.

There were changes in the purchase agreements and this memo shows that Mr. Friend wants to have a meeting and discuss those changes.

Now, the second document relates to what the changes are and --

THE COURT: But it is not related to February

25th. It is a month later, no indication that Friend got this.

MS. HYNES: Your Honor, the evidence will show through other documents that there was only one change in the purchase contract relating to the exchange.

THE COURT: 891 is out.

Now let's go on to what I will assume is 891-A, which is the document dated March 22, 1971 from Larry Perlmutter to ATC Realty, Roth Realty and Acres and Homes in Michigan.

MR. GLENDON: Excuse me. Your Honor will note on that that Friend's name does not appear at all.

THE COURT: I said that.

MS. HYNES: There are two March 22nd memos.

THE COURT: We are doing the first one.

MS. HYNES: Okay. Let me just state for the record they are basically identical. They are sent to different sales offices.

I will amend that statement by saying the cc's -- no, the cc's are the same as well.

So the March 22, 1971 memo which was sent to various sales offices explains the change in the purchase contract for customers.

The basic change really is that where the prior contracts stated and provided that a customer to exchange a home site lot for a building lot of equal size in 1971, that provision was changed to only permit an exchange of one home site lot for a building lot of equal value, and that word change from "size" to "value" is very important because the government's proof will show --

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THE COURT: Now, Mr. Glendon's position is how does that tie in with Friend?

MS. HYNES: It ties in to Friend because in February the memo to the sales office is explaining the change is March. In February Friend is saying --

THE COURT: He is saying I would like to have a conference. It doesn't say he was there or involved in it.

MS. HYNES: It shows his knowledge of the changes.

THE COURT: It does not and I would not let a jury infer from the memorandum of February 21st -- 25th that he was involved in the March 22nd document.

MS. HYNES: Your Honor, he may not have been involved in the March 22nd document in terms of sending it out, but the February document says, he wants to explain the changes. In other words, he is talking about the changes that have been made. He knows that there were changes in the contracts.

THE COURT: That is dated February 25th and the document you are bringing in for me, at least, for the first time that shows the change is March 22nd.

MS. HYNES: Your Honor, if we never introduced the March 22nd document, I would submit we could still eojb 2

introduce the February document --

THE COURT: I have ruled on that.

Tell me how the March 22nd comes in.

MS. HYNES: The March 22nd comes in to show what the changes were in the sales contracts.

THE COURT: All right. This shows that there were changes in the sales contracts and it is shown, at least as far as I can gather here by a document dated March 22, 1971.

Now, Mr. Glendon says how does that tie Friend in?

MS. HYNES: Your Honor, the documens are offered as a group. This is not -- the point is if the government is going to be offering the document which will now be 891, Mr. Friend's name does not appear on it so we are in a very difficult position. We are not offering that document against Mr. Friend so that's a difficult situation.

THE COURT: Now the next document, which is March 22, 1971, same date, but with a heading "Directed to All Rio Offices" with the exception of ATC Realty and Acres and Homes Michigan will become 891-B. I gather the same ruling would follow there.

Now, we come to a document of February 24, 1971 which predates the 891 for identification, which has been ruled out. What is your objection to that one, Mr. Glendon?

We are going to call that 891-C, memorandum from Mr. Friedman to Mr. Friend, dated February 24, 1971.

MR. GLENDON: This document appears to relate to the Silver Springs contract, your Honor. You see down at the bottom of the page, he says, as you can see by my example I am talking about the new Silver Springs contract.

THE COURT: Ms. Hynes.

MS. HYNES: Your Honor, the second paragraph in the middle of the paragraph, this is a memo from Dan Friedman to Solomon Friend and the subject is communications. He is basically talked about improving communications.

He says, an example is that Chester Carity is working directly with you or your department on revising or amending provisions of our existing purchase agreements.

That's in February of '71. The government's proof will show that the purchase agreements were amended. They were amended for Rio Rancho Estates and that Daniel Friedman is showing his knowledge that Chester Carity is working with Mr. Friend on changing those purchase agreements. That really is the crux of the document in terms of showing the defendant Chester Carity's involvement in addition to Mr. Friend's involvement with the changes in those purchase agreements.

THE COURT: I will let 891-C in.

Let's review this now to make sure we are all in agreement.

MR. GLENDON: Your Honor, I believe that completes the exhibits that we objected to as inadmissible.

THE COURT: That's right. This document which you submitted to me on October 28th at 4 p.m. I gather indicates the documents which you are objecting to and the rulings made yesterday afternoon and this morning show that Exhibit 466 is in. 527 is in. 547 is to be worked out between the parties.

566 is out.

569 is out.

Two sentences of 575 come in.

577 comes in.

578 is out.

994 is out.

579 is out.

580 is out on direct.

582 is in for paragraphs 11 and 12.

584 is out on direct.

eojb 5

585 is out.

586 can come in with a proper foundation.

587 is out.

592 is out.

1051 is out.

596 is out.

597 is out.

597-A is in because it is 466.

628 has a hold on it.

629 is in.

632 is in.

732 is in.

818 is out.

1056 is out.

1020 is out -- pardone me, 820 is out. 826 is out. 827 is out. 828 is out. 830 is in.

891 is out. 892-A is out. 892-B is out -- I am sorry, 891 is out. 891-A is out. 891-B is out. 891-C is in. 892 is out. 937 is out. 1057 is out. 1080 is out.

MR. KAUFMAN: Your Honor, one matter. You said Exhibit 579 is out. My notes indicate that you allowed in paragraphs 6 and 7 which referred to the BLM King closing and the King option closing of the additional land.

MR. GLENDON: No.

THE COURT: Let me take a look. I have it here. 579 you are referring to?

MR. KAUFMAN: Yes, paragraphs 6 and 7.

THE COURT: 6 and 7 is in on the representation of the government that that refers to land that was bought during the time that you were representing to the parties that you were finishing up.

MR. KAUFMAN: Thank you, your Honor.

MR. GLENDON: Your Honor, so the record may be clear, I think it is, we made these objections on the grounds that they were patently irrelevant. Of course we will have objections to other documents if and when they are offered.

THE COURT: I don't say that you have lost all your right to object to documents, Mr. Glendon, but I have ruled on these.

MS. HYNES: Your Honor, just one item. On 579-A it related to 466 and I don't believe that there was an objection by Mr. Glendon.

THE COURT: I said that 579 is 466. At least that's what I was told.

It is not.

MS. HYNES: 579 is 466.

THE COURT: What is 579-A, Mr. Glendon?

MS. HYNES: He didn't have an objection to that.

MS. THOMPSON: I believe it is a map, your Honor.

THE COURT: You say it relates to 466?

MS. HYNES: He states again he does not have an objection to 579-A.

THE COURT: May we now go to Room 705.

Sorry, we have a grand jury testimony problem.

MS. HYNES: Let me state for the record that I do not intend to refer to Mr. Friend's grand jury testimony in the opening.

THE COURT: Does that make any difference to you?

MR. GLENDON: It is a matter of when your Honor wants to rule on this.

THE COURT: I think it would be better to get the openings to the jury out of the way and if we have time this afternoon we will take this up.

(Recess.)

(In open court; jury not present.)

(At the side bar.)

THE COURT: Mr. Lavinsky, who is standing here, has informed the court that he is waiving his opening on behalf of ATC and will open solely on behalf of AMREP.

MR. LAVINSKY: That's correct, your Honor.

THE COURT: Okay.

MR. ARISOHN: As a result of the rulings regarding openings, Rio Rancho will waive its opening.

THE COURT: That means when you waive its opening, consonant with my ruling the other day, you waive it for all times.

MR. ARISOHN: That's correct, your Honor. I am not reserving it for presentation on the defense case. It is waived.

THE COURT: All right.

(Continued on next page.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

v. :

AMREP Corporation, :
Rio Rancho Estates, Inc.,
ATC Realty Corporation, : 76 Cr. 644
Howard W. Friedman,
Chester Carity, :
Irving W. Blum,
Henry L. Hoffman, :
Herman B. Oberman,
Solomon H. Friend and :
Daniel Friedman,
:
Defendant.
:
--------------------------------------x

November 5, 1976
10:00 A.M.

BEFORE:

HON. CHARLES M. METZNER,

District Judge.

APPEARANCES:

PATRICIA HYNES, ESQ.
MICHAEL DEVORKIN, ESQ.
ALLAN KAUFMAN, ESQ.
JOHN F. KALEY, ESQ.
Assistant United States Attorneys

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DAVID BERNFELD, ESQ.

CARL RUBINO, ESQ.

WILLIAM GLENDON, ESQ.
JAMES WEIDNER, ESQ.

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(A jury of twelve and six alternates was duly impaneled and sworn)

(In open court - jury present)

THE COURT: It may be that we cannot get an exact order for the openings. I don't think it makes that much difference. I think it is more important that each of you take a seat.

Leave it the way it is. It doesn't make any difference on the openings that they sit in their exact seat number.

You may proceed.

MS. HYNES: Thank you, your Honor.

Judge Metzner, defense counsel, Mr. Cuccia, ladies and gentlemen of the jury:

This is a land fraud case. It is a case about a swindle in the sale of desert lots.

MR. FLEMING: Object to this characterization, if your Honor please.

THE COURT: It is a case that you allege is. It hasn't been proven yet.

MS. HYNES: It is a case about the sale of desert lots, lots which were falsely represented to be sound and profitable financial investments; lots which were falsely represented to be increasing in resale market value and lots which could be resold at substantial profits.

This case is about an alleged swindle, an alleged swindle by a large corporation, a corporation listed on the New York Stock Exchange. It is a case about an alleged swindle by the principal officers, directors and shareholders of that corporation and two subsidiaries of AMREP Corporation.

This is a case about how these defendants bought 91,000 acres, 91,000 acres, of desert land in New Mexico, 142 square miles. How they subdivided that desert land by bulldozing dirt roads and sold off these lots to thousands and thousands of people throughout the country by means of high pressure selling techniques and false and fraudulent and misleading statements about the value of these desert lots as a sound and profitable financial investment.

Simply put: These defendants are charged, and the government will prove, that they swindled thousands and thousands of people who bought these desert lots as a financial investment in reliance on the false and misleading statements and representations that were made by these defendants about the investment value of these lots.

These defendants are charged with violating federal criminal laws because they used the United States mails and they used other means of communication, interstate means of communication, to carry out the swindle that the government will prove in this case.

This trial will tell the story of how the defendants sold these lots as a financial investment. What they said about these lots to get people to buy them, and what the true facts are and what the government will prove the true facts are and what the government will prove these defendants knew the true facts to be.

As Judge Metzner told you, my name is Patricia Hynes. I am an Assistant United States Attorney in this district. Seated with me at counsel table are Allan Kaufman, Michael Devorkin and John Kaley. They are also Assistant United States Attorneys.

Also seated at counsel table is Loretta Mae, who is with the U.S. Attorney's office and David Shank, who is a Postal Inspector with the United States Postal Inspection Service. Together we will present the evidence on behalf of the government in this criminal trial.

There are two federal statutes that are involved in this case. The mail fraud statute and the interstate land sales full disclosure act.

All of the defendants are charged with violating the mail fraud statute and that statute makes it a federal crime to devise and to engage in a scheme to defraud or to obtain money by means of false or fraudulent pretenses, representations or promises, and to use the United States mails in furtherance of that fraudulent scheme.

Except for the defendant Herman Oberman, all of the defendants are also charged with violating the interstate land sales full disclosure act. That statute makes it a federal crime to use any interstate means of communication or the mails to engage in either a scheme or practice or course of business which operates as a fraud or a deceit upon purchasers of subdivided land.

There are ten defendants in this case, three corporations and seven individual defendants.

The three corporations are: AMREP Corporation. AMREP Corporation was formerly known as the American Realty and Petroleum Corporation. Its headquarters are here in New York City.

Rio Rancho Estates, Inc. is another corporate defendant in this case. It is wholly-owned by AMREP Corporation. Rio Rancho Estates, Inc. was set up to take title to the land that is now called Rio

Rancho Estates.

The third corporate defendant is ATC Realty Corporation and that is also owned by the defendant AMREP Corporation. ATC was the selling organization for the Rio Rancho land in the New York area and its headquarters are also in New York.

The seven individual defendants are Howard Friedman. Howard Friedman is the president and director and a member of the executive committee of AMREP Corporation. He is also president and director of the defendant Rio Rancho Estates, Inc. He is a director of the defendant ATC Realty Corporation. He has been an officer and a director of the defendant AMREP and Rio Rancho since 1961.

The defendant Chester Carity is executive vice-president and a director of AMREP and Rio Rancho Estates, Inc.

Mr. Carity is also a member of the executive committee of AMREP Corporation. Mr. Carity has also been an officer and a director of AMREP Corporation since 1961.

Mr. Carity is also the president of ATC.

The defendant Irving Blum is a past president of AMREP. He was president of AMREP from 1962 until 1968 when he became chairman of the board of directors of AMREP

Corporation. He is also chairman of the board of directors of Rio Rancho Estates, Inc. He is a member of the executive committee of AMREP and he is a director of the defendant ATC.

The defendant Henry Hoffman is a director of AMREP and Rio Rancho and until September of 1974 the senior vice-president of AMREP and Rio Rancho. He was also an officer and a director of ATC, and he, too, was an officer and a director of AMREP and Rio Rancho as far back as 1961.

Defendant Solomon Friend was, until recently, a senior vice-president, a director and general counsel of the defendant AMREP Corporation. He was vice-president of the defendant Rio Rancho Estates, Inc. He was a director of the defendant ATC Realty, Inc.

Mr. Friend has held executive positions in the defendant AMREP Corporation since February of 1970.

Defendant Daniel Friedman is the senior vice-president of sales and a director of AMREP. He is the vice-president of defendant Rio Rancho. He has been an officer of AMREP since 1967 and a director of AMREP since 1972.

Defendant Herman Oberman was president of AMREP and Rio Rancho back in 1961. He resigned that office as president of AMREP and Rio Rancho in 1962, but he continued to devote his efforts to the activities of AMREP and Rio Rancho until 1969 when he retired.

Defendant Oberman has been one of the principal shareholders of the defendant AMREP Corporation. The defendants Blum, Hoffman, Carity and Howard Friedman are also major shareholders of the defendant AMREP Corporation.

The story begins, ladies and gentlemen, back in 1961. In July of 1961 the defendants Herman Oberman and Henry Hoffman negotiated the purchase of a 54,000 acre tract of seni-arid desert land in Sandoval County.

I mentioned to you earlier that Rio Rancho Estates is 91,000 acres. The first portion of the property, the 54,000 acres, was the first portion and that was purchased in 1961 at a price of $178 an acre. The contract and sale was negotiated by the defendants Herman Oberman and Henry Hoffman.

A corporation was formed to take title to this tract of land. The corporation was called Rio Rancho Estates, Inc.

Not only did the corporation take title, but the corporation then began to subdivide that tract of land.

The 54,000 acres of land was subdivided by bulldozing in dirt roads and staking boundary corners at various lots. These unimproved desert lots were then called homesites, commercial and multi-dwelling lots and ranchettes.

Generally, the so-called homesite lots were half-acre lots, although some were larger. These constituted the so-called homesite lots and they constituted the bulk of the lots that were sold.

The so-called commercial and multi-dwelling lots were less than a half of an acre. These lots were sold to purchasers with a view toward their putting in commercial retail establishments, which supposedly in and of themselves would be income producing, and the so-called ranchettes were several acres in size, sometimes three to five acres, because the terrain of the land was so rough that it couldn't be subdivided into anything smaller.

What the intentions of these defendants were with respect to these unimproved lots, which they cleverly called homesite lots, commercial lots, multi-dwelling lots and ranchettes, is set forth in a registration statement which was filed with the Securities and Exchange Commission in 1962 by the defendant AMREP.

The defendant AMREP wanted to sell stock in their company. In order to sell stock they had to register with the Securities and Exchange Commission and they had to file what is called a registration statement. The purpose of the registration statement was to give the people who wanted to buy stock in the company information about the company, about the company's business and what it could do.

The registration statement, which I will quote from, was signed by the defendants Irving Blum, Chester Carity, Henry Hoffman and Howard Friedman.

And very clearly states what the intentions of these defendants were with respect to that unimproved desert land that they were selling.

It says:

"The unsold land may be considered raw land which is to be improved by the company only by the construction of roads."

That report goes on to say:

"The company proposes to install roads on the property suitable for the needs of purchasers of homesites. It intends to build such roads to the specifications of the County of Sandoval which do not require that the roads be surfaced."

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The defendants were selling these lots as raw, unimproved desert lots by blading in dirt roads. but by selling off these lots to customers as home sites, as commercial lots and as ranchettes.

But what they told to the purchasers of the land was very different as opposed to what they told the Securities and Exchange Commission. What they told the Securities and Exchange Commission was true, they did not intend to improve the lots that they were selling to purchasers, but what they told purchasers was very different. They led purchasers to believe that they were going to improve these dessert lots with water, with utilities and with paved roads and, indeed, the purchase price of these lots included these utilities.

Purchasers were told that the price that they were paying included water, utilities and paved roads, and that these lots, by being improved by the defendants in this way, would enhance their resale value, and that's what made them a good financial investment.

Today, 1976, November, 1976, almost 15 years later after they filed that report in 1962, the lots that they sold to purchasers as home site lots, as commercial lots and as multi-dwelling lots and ranchettes have not been improved with water, with utilities and with paved roads; 15 years later they are still raw, unimproved desert lots without utilities.

Now, keep in mind that these lots were sold as financial investments which could be resold at substantial profits. That was the reason given to people to buy these lots. They were to improve and appreciate in resale value because these defendants were going to improve them with the utilities and thereby enhance the resale value.

And there was another reason why the defendants gave purchasers and led purchasers to believe that these were sound and profitable financial investments. Not only were they going to improve these lots, did they tell purchasers, the second reason was that there would be a demand for these lots. Why? The defendants represented to prospective purchasers that these lots were directly in the path of the growth of the City of Albuquerque, Albuquerque, New Mexico, and that Albuquerque was bursting at the seams and that Albuquerque could only grow to and through Rio Rancho Estates and, therefore, there would be a great demand for these lots and these lots could be resold at substantial profits. The defendants went so far as to represent that the lots were already rapidly increasing in resale market value due to the growth of Albuquerque.

The government will prove all of that was false and misleading and the defendants knew that that was false and misleading and had to know that that was false and misleading.

The government will prove that Albuquerque was not bursting at the seams at any time during the 15 years that these defendants were selling this land.

Rio Rancho Estates was not the only direction that Albuquerque would grow, and the government will prove that.

The government will prove that there was plenty of land in Albuquerque and plenty of land in the metropolitan area surrounding Albuquerque so that Albuquerque could grow and would grow without ever reaching Rio Rancho Estates, and the defendants knew that, and the government will porove that.

Moreover, the government will prove that during the entire 15 years that these defendants were selling this land as a wonderful financial investment which could be resold at a profit, that there wasn't any resale market in Albuquerque during that 15 year period, and the defendants knew that.

From late 1961 to about 1964, the defendants sold these lots primarily through the mail. But the defendants were only moderately successful.

But in 1965, the defendants hit the jackpot. They began to hold sales dinners.

Prospective purchasers were invited to free dinners at which a sales pitch was made to buy this land. It was then that sales really took off.

This land was sold at sales dinners in more than 30 states throughout the country with basically the same sales presentation which the government will prove to you at this trial.

The government's proof will show that by selling these lots at the sales dinners, not only did the defendants continue to make the false and fraudulent and misleading statements about the value of these lots as a financial investment, but defendants also utilized high pressure techniques and exerted psychological pressure on the persons attending those dinners to immediately sign contracts to buy this land. It was this combination of false and misleading statements about the investment value of the land together with the high pressure sales techniques that made these sales dinners so successful.

These sales dinners, the government will prove, were carefully planned down to the last detail. Everything that was used at these sales dinners, the promotional material, the films, came from AMREP headquarters. These defendants got it down to a science and it worked like clockwork.

There was a set format to be followed and the salesmen were trained to follow that format. "It works, don't deviate from it, do it the way we tell you to because that's how you make the sale."

And they were right. The format did work. The procedure did work.

There were set techniques to be used at these dinners and salesmen were trained to use these techniques and they were used.

Salesmen were seated at tables with customers and there was a speaker in the front of the room who gave a presentation. The presentation also came from the AMREP headquarters. They were called podium speeches. They varied slightly depending on the individual speaker, but basically they were the same speaker's presentation.

The entire dinner was carefully planned to create a sense of urgency, to apply psychological pressure to buy this land now, tonight, because it's going fast.

It was represented as a unique investment opportunity, an opportunity to make a lot of money. It was represented as safe; a sure thing. It was represented as more profitable than any other type of investment.

Purchasers were led to believe that they could expect this land to appreciate up to 25 per cent a year, or more; that an investment in this land would provide financial security for their future.

The defendants had salesmen at these dinners which they called land consultants, and they held these land consultants out as experts -- experts who were qualified to give knowledgeable investment advice about buying this land.

Sales people distributed a confidential survey when a customer came into the dinner. The confidential survey also came from AMREP headquarters, and that prospective customers were to complete this confidential survey at the beginning of the dinner.

Let me just read a couple of questions that were on this confidential survey.

"Do you have an income plan for your future?"

You were asked to check yes or no.

"What per cent return are you receiving on your top investment?"

There is a blank for you to fill in the per cent of your return.

Now, listen to this one:

"If you were shown an investment program that has consistently out-performed the above return, what amount could you set aside a month?"

Then there is a space to check $40, $50, $65, $85, $100 or more.

Prospective purchasers at these dinners were told that this was an investment program. It was represented as a money-making proposition and that in a few years the investors money could be doubled or tripled.

The reason given as to why this investment was such a sure thing was, one, that AMREP was going to improve these lots that they were selling you. These people didn't believe that they were just going to buy raw desert lots and that's why it was a good financial investment, they had to be told something else and they were told something else. They were told that these lots that they were buying that night at that dinner were going to be improved by the defendants with water, with utilities, with paved roads, and that, therefore, those lots were going to have increased resale value.

And the second reason was that there would be that great demand for these lots because Albuquerque could only grow to and through Rio Rancho Estates and, therefore, these lots would rapidly increase in market value and could be resold at substantial profits.

The sales presentations were designed to buttress the claims made about Rio Rancho land being a good financial investment by making reference to comparisons of other land transactions in the Albuquerque area which showed enormous profits, and by making reference to past price increases of Rio Rancho land to create the impression that the land was actually increasing in resale value.

The government will prove at this trial that the comparisons that these defendants made to other land in the Albuquerque area were false and misleading comparisons. There was no real comparison between the land that they were saying was sold in Albuquerque and Rio Rancho land. The Rio Rancho land that these people were selling was raw, unimproved desert land, and those comparisons that they made about the resale profits that were made on land in Albuquerque simply weren't fair comparisons, as the government's proof will show.

And, moreover, the government's proof will show that during the entire 15 years that they were representing that these lots could be resold at substantial profits that there was no resale market in Albuquerque during that entire period of time, and that the defendants knew it.

At the end of the sales presentation, a speaker in the front of the room would refer to an allocation sheet. That was a sheet that had different lots on it by numbers. It had maybe ten numbers down the sheet. And it was the designation of the lots that were available that night at the dinner. And salesmen were trained that when the speaker in the front of the room finished the sales presentation and started to refer to the allocation sheet, salesmen were trained to jump up and call holds on property.

In other words, a salesman would jump up and say, "Hold number 4," another one would jump up and say, "Hold number 6, hold number 7."

And this was done to create the impression that these lots were going like hotcakes.

Now, these salesmen were trained to jump up and to call those holds whether or not a sale had been made.

And what happened was the salesman would jump up and call a hold and purchasers would believe that other people were buying this land and, "Gee, maybe I should buy it, too."

And that was the reason they did it.

And every salesman was told, "When that speaker refers to that allocation sheet, you jump up and you call a hold."

"Why, it works, that's why you do it."

And they were trained to do it and they did do it.

After a salesman jumped and called a hold, he would sit down and then he was trained to start filling out a contract even if the purchaser didn't say they wanted to buy the land. He was trained to fill out that contract. More pressure on the purchaser.

The salesman would say, he is sitting at a table, to a purchaser and he jumps up and calls a hold, the purchaser would look at him, and the salesman says, "I called a hold on that because I want to reserve that lot for you" -- this is what they were trained to say -- "because that's a choice lot, and unless you bought that lot tonight, it's no longer going to be available, and that's why I want you to have that lot."

Then the salesman would start filling out the contract.

These salesmen were trained to overcome every objection that a customer could give. And this technique, ladies and gentlemen, worked. And you will hear how these salesmen were trained. You will hear what went on at these dinners.

People were pressured to sign contracts that night. They were discouraged from taking any material away from the party if they wanted to think about it. They were told, "No, we sell it here. That's how we operate. We sell it that night."

And they were discouraged from taking away any sales material or the sales contract to give them an opportunity to study it, to think about it and to review it.

Salesmen were also trained to minimize the importance of property reports and offering statements.

Now, these were reports, some of them are called property reports, in New York they were called offering statements, but these were reports that were required to be given to a purchaser at the time that he purchased the property.

In many situations, the purchaser didn't get a property report, but even if the purchaser did receive a property report, it was concealed amongst promotional material.

This property report had important information which was not included in the sales presentation and salesmen discouraged people from reading those property reports. People were pressured into signing contracts before they were ever able to read or understand the terms of the contracts, before they were ever able to read or to understand anything that was in the property report, if they did receive it and if they did know what it was. And that's what the government's proof is going to show here.

And, finally, the pressure that was used to get people to sign contracts was to tell them that this wasn't a final decision, that you had six months to make that final decision. But six months involved a visit to the property, because if you signed the contract that night, the only way that you could cancel and you could get a refund was to visit the property.

But people were led to believe that they had that six months to make the final decision about whether they really wanted to purchase this property.

I will talk a little bit later about company guided tours to the property.

The government will prove, and you will hear from that witness stand, how these dinners were highly organized and carefully planned to steamroll right over people, to catch people off guard and to get them to sign installment contracts in very pressured circumstances before they had an opportunity to think, to read the contract, to understand the terms of the contract.

Now, this land was sold by installment contracts, a down payment and then so much a month.

After the dinner, the day after the dinner, sales people were trained to call the person who bought the property. And this was done to head off any buyer's remorse. The salesmen would call the purchaser and, again, start telling the purchaser about the wonderful investment they made and to welcome them to the group of investors at Rio Rancho Estates.

It was also standard procedure to then send out a letter congratulating them on their wise investment decision. The letter said "This was one of the most important investments you will ever make."

Thereafter more letters were sent, more promotional material telling the customers that their investment was increasing in value, and these letters and promotional material were designed to get the people to keep making the payments on this land.

Purchasers were invited back to additional dinners and sold additional land on the basis of representations that their land had increased in value.

In fact, the only thing that had increased were the prices that these defendants were charging for this land.

The evidence in this case will show that approximately twice a year the defendants would hike the prices up sometimes by as much as 10 or 11 per cent twice a year, and then they would say to purchasers, "Look how much your land has increased in value."

Well, in fact, there was no resale value for this land at all. There was no resale market for this land. That land had not increased in resale value the way they were leading purchasers to believe that it had.

Recently, these defendants were selling these raw, unimproved desert homesite lots for as much as 11,000, $800 an acre. This was the land that they bought for $178 an acre.

Recently these defendants were selling raw, unimproved commercial lots for as much as $25,000 for a lot.

These defendants represented to purchasers that this was a unique investment opportunity and that this was a low mark-up on this land, the land that they bought for $178 an acre in 1961.

I mentioned earlier that the sales dinners began in about 1965. These dinners were so successful that by 1969, the defendants had almost sold out the entire 54,000 acres of this land. And between 1969 and 1971, the defendants bought another 37,000 acres which adjoined this property, the original 54,000 acres. So by 1971, Rio

Rancho Estates was 91,000 acres, 142 square miles. That happened to be almost double the size of the City of Albuquerque in terms of acreage.

Again, the additional land that was purchased was subdivided by bulldozing dirt roads and, again, these unimproved desert lots were called homesites, commercial lots, multi-dwelling lots and ranchettes. Now there was a total of 86,000 of these subdivided lots -- 86,000 subdivided lots. And the defendants have sold 77,000 of these lots, 77,000 unimproved desert lots, to 45,000 purchasers throughout the country, and the total sales price is $170 million. And if all of the 86,000 lots, the subdivided umimproved desert lots were sold, it would amount to a total sales price of $200 million.

The total price that these defendants paid for the 91,000 acres that they bought, the total price, was $17,800,000; the total sales price for what they were selling off as unimproved land was $200 million.

At the same time that these defendants were representing at these sales dinners all over the country that these lots were good investments, that they were increasing in value, that they had increased in value, the defendants were able to buy the vast majority of that 37,000 acres, specifically they were able to buy 31,000 acres of that, for $180 an acre between 1969 and 1971.

So think about it. The government will prove that almost 10 years later they were able to acquire a vast majority of that additional acreage at an increase of $2, $2. They paid $178 an acre for 54,000 acres in 1961 and they were able to buy, 10 years later, the adjoining acreage, the majority of the adjoining acreage, for $180 an acre.

That land was really increasing in value. And the government will prove that it wasn't increasing in value.

MR. FLEMING: Objection. That is a gross distortion of facts and I will object to it.

THE COURT: Overruled. She says she will prove it and she will be held to it.

MR. FLEMING: As long as she is.

MS. HYNES: Ladies and gentlemen, I would like to show you an exhibit which will show you Rio Rancho Estates. It is basically a map of Rio Rancho Estates.

For the record, this has been marked as Government's Exhibit 1.

(Continued on next page.)

Now, you have to look closely at this, but these little blots, all of these tiny little blots are lots. All of this is not roads and all these lines don't mean a road. They are basically a drawing of the lots at Rio Rancho Estates.

I told you 86,000 lots were subdivided. 86,000 of these little squares here were subdivided.

77,000 of these lots have been sold. The original purchase of land was this bottom half which was the 54,000 acres.

Then the defendants bought the top half. That was the additional 37,000 acres.

This begins to show the vast number of lots that are included in Rio Rancho Estates. 86,000 of these unimproved desert lots.

Now, I want to get into a very integral part of this scene. I will come back to this map, but let me explain something else first.

A very key element in this scheme and the part of the scheme that really made it possible, the government will prove, for these defendants to carry on what the government will prove was a swindle over these fifteen years was what was called an exchange privilege.

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Now, I mentioned earlier that in the fifteen years that these defendants had been selling this land they had not improved with water, utilities, the land they were actually selling to people at these dinners. They didn't improve it. They haven't and they don't intend to.

That report back in 1962 said they didn't intend to improve it. They bladed in the dirt roads. That was all they were going to do and that is all they did do, but they were very clever, and the government's proof will show how clever these defendants were.

They set aside some of this land, which they didn't offer at sales dinners, and they put utilities in that land, which the company owned, not land which they sold at these dinners that anybody else owned, land which the company owned.

The government will prove that in order to create the false impression that they were gradually going to develop these 91,000 acres of Rio Rancho land that the defendants installed water, utilities and other customary amenities, such as paved roads, in the small company owned building areas.

Now, the defendants knew that only a very small percent of the people who bought this land would actually move there. The primary thrust of this entire sales presentation was buy it as a financial investment. But the defendants knew that a small percentage of the people who bought it would move there. They planned on that.

For those purchasers who actually wanted to build at Rio Rancho the defendants set up this so-called "exchange privilege." This exchange privilege was set up so that only a single half-acre homesite lot could be exchanged for a lot in the company owned building area.

Suppose you were at a dinner and you bought two acres of this land. You thought it was a wonderful investment and you bought two acres.

You also decided at some point that you actually wanted to move to Rio Rancho. When you decided to move the company would allow you to take one of those homesite lots -- I told you that the homesite lots were generally a half acre in size -- so if you bought two acres you probably had four homesite lots. You were able to take one of those homesite lots and trade it in, give it back to the company, and you could get a lot in what the company called their "building area". That was the area that had utilities. That was the area the company owned.

The government's proof will also show that when a purchaser exercised this exchange privilege, gave them back the one homesite lot, because that is all they were able to do, and came and got a lot in the building area, that the purchaser usually had to pay more money for that lot in the building area even though the defendants represented that the price included utilities. These building areas, many parts of them were called premium areas and that meant you had to pay more money.

The government's proof will show the kind of money these defendants were charging people to even get into the building area.

Moreover, if a person was trading in a half acre lot, the government's proof will show, it usually ended up with a quarter acre lot in the building area.

Now, the defendants used these small company owned building areas very cleverly. They filmed them. They showed films of them at the sales dinners and they used those films of the building areas to mislead people into believing that is what the defendants were going to do to the land that you were buying. That is what we intend to do. That is what the purchase price includes, the water, the utilities, the paved roads.

But that is not what they were doing to your land. That is not what they intended to do to your land. And that is not what they did to these people's land in fifteen years.

They improved their land. The government's proof will show that they took the money that was paid for these lots, the money that was supposed to include utilities, and they took that money and put the utilities in their land and they knew that only a small number of people would come and want these building lots so they didn't have to put utilities in a great amount of this land.

They were small building areas where the utilities were put and where the company owned it.

Everything about that sales presentation at those dinners were designed to create the impression that these defendants were going to improve your lot, the lot that you paid your money down for, the lot that you were going to pay off over the next eight, nine and ten years, that that lot was going to be improved by these defendants and it wasn't and the government will prove that.

Now, the defendants were very clever, as the government's proof will show, in how they portrayed this exchange privilege. People were led to believe that the defendants were gradually extending utilities to the entire property and they were in the first stages of this, but wait, they are going to get to your property.

Well, in the fifteen years that these defendants were selling this land, they didn't get to people's property. They only got to their property and that is what the government's proof will show.

Now, this exchange privilege was represented at these dinners and in promotional material, in the film and even in the sales contract, it was represented as a fallback position. It was represented as if utilities have not reached your lot, if utilities have not reached your lot, at the time that you are ready to build, you can exchange for a lot in an area already served -- already served -- by utilities.

The whole thrust of that was to make people believe that utilities were coming, they are coming, but if by chance they don't get to your lot, you are okay because you can come into this area that already has utilities.

Now, that was very clever the government will show because these people believed that utilities would come to the lot and they are still waiting and they will always be waiting because these defendants, the government's proof will show, were not -- were not -- going to improve these people's lots. They were always -- always -- only going to improve the company's lots in the building areas, but they didn't.

That they didn't sell at these dinner areas, these areas that they just had available for people who actually wanted to move there.

The government's proof will show that these defendants figured and knew and planned that approximately five percent of the purchasers would move to Rio Rancho Estates.

Now, the government's proof will show that the defendants knew this because of a prior experience that they had with another subdivision that they owned, a subdivision --

MR. FLEMING: Objection.

THE COURT: Overruled.

MS. HYNES: -- a subdivision they owned in Florida which was called Rainbow Lakes Estates and the government's proof will show that these defendants at their sales dinners had their sales people represent to purchasers that the defendants had already developed a city in Florida. It was called Rainbow Lakes Estates and, therefore, we have done it already. We are now coming to

Rio Rancho Estates and we are going to do the same for Rio Rancho Estates.

Well, the fact is, and the government will prove, that Rainbow Lakes Estates was a subdivision which they owned in Florida. It was sold in the late 1950's and early 1960's and it was 10,000 acres. It was subdivided into 13,000 lots and today, 1976, there are roughly 560 homes.

The defendants took that prior experience that they had at Rainbow Lakes and they knew and they told people, the government's proof will show that they told people that they only expected five percent of the lot purchasers to move to Rio Rancho because they were relying on that experience that they had in Rainbow Lakes.

So, the defendants knew that they were not going to extend utilities to this entire subdivision. The defendants knew that they were always going to keep the utilities in these company owned building areas, which were set aside, and the people who exchange the five percent or whatever it was, if it was ten percent, they could exchange into that building area and that is what kept this scheme that the government will prove going because the sales presentations led you to believe they were going to do it to your land and they weren't.

The letters that they sent out to you after you bought that property, the government's proof will show, continued that basic misrepresentation. It continued that basic misleading statement, wait, utilities haven't reached your lot yet.

Now, some people who bought this land, the government's proof will show, wanted to move but they also wanted to move on their land and the way this whole scheme operated you could never live on your land. You could not use your land, which they called a homesite, as a homesite because it was raw, it was unimproved, it was without utilities, and the proof will show that most of these lots were miles from utilities.

So the land that you were buying even if you wanted to move to Rio Rancho, you couldn't live on it. This choice lot that was sold to you at these dinners couldn't be used as a homesite.

These commercial lots that you might have bought at these dinners were never going to be surrounded by development, were never going to be able to have retail commercial establishments on them because the defendants weren't bringing those utilities out there. There wasn't going to be a demand for that land.

The homesite owners --

MR. FLEMING: Now we are summing up, if your Honor please, and I object.

THE COURT: Yes.

MS. HYNES: The government's proof will show that the homesite owners who were going to move there were approximately five percent. That is all the defendants ever expected to move.

The government's proof will also show that the growth of Albuquerque wasn't going to create any demand for these lots so these lots were going to be out there, raw, unimproved and they have been out there for fifteen years, still raw, unimproved desert lots. That is what the government will prove.

Now, let me focus on two other aspects of this exchange privilege. First, because the defendants knew that only a small percent of the people who bought that land would ever move there, they only set aside a small amount of land for the company owned building areas and that there was not enough land in these company owned building areas to exchange all of the lots that they were selling off, all of these homesite lots, for a lot in this building area.

Secondly, if you bought a commercial lot, the government's proof will show, you didn't even have a right to exchange for a lot in the building area. If you bought a multiple dwelling lot or a ranchette, you didn't have any right to exchange.

The contracts for those lots didn't provide for a right to exchange those lots, so those lots were raw, unimproved lots -- now these were the commercial lots I mentioned recently some of them had been sold for as much as $25,000 a lot. It was out there in the desert. It was raw, it was unimproved and you had no right to exchange it into the building area.

These were the lots that were sold on the basis of what a wonderful investment opportunity they presented. How they could be income producing.

Now, I mentioned earlier that these small showcase building areas were used in the films and in the promotional films which you will see here and when you watch those films think about if you were sitting at a sales dinner what you would believe about what was going to be done to land that you were purchasing.

THE COURT: That is not opening, Ms. Hynes.

MR. FLEMING: Thank you.

MS. HYNES: But these showcase building areas had another purpose in addition to being used in the films. These showcase building areas were utilized by the defendants in their company guided tours.

Now, I mentioned earlier that at a sales dinner purchasers were told, sign the contract now. It is not a final decision. You have six months, go out and see the property, make up your mind.

Well, what happened was, first of all, in order to go out and see the property, the purchaser had to pay between four and $500 per couple. The company ran company chartered tours, four or five day tours and you had to pay four or $500 to go on one of these tours, but these tours were very successful and they were a very important part of the selling program of these defendants.

The defendants took these people on tours, took many of them you will hear, and they used these tours to discourage people from cancelling their contract and to sell people additional land. You will hear how these tours were organized and operated. How these people on the tours were wined and dined. How their movements were carefully controlled and how the same false and misleading statements about the investment value of this land and about the growth of Albuquerque were repeated on these tours.

You will hear the techniques that were used to get people to buy additional land,a practice referred to as loading. The defendants tried to sell as much land as they possible could to purchasers. They offered multiple discounts if you purchased additional land.

Now, I mentioned to you earlier that the defendants had represented to prospective purchasers that the only direction that Albuquerque could grow was to and through Rio Rancho and the defendants represented that Albuquerque was boxed in, was surrounded by mountain ranges to the east, federal, state and reserved land to the north and the south and part of the west so that the only available direction for Albuquerque to grow was to the northwest where Rio Rancho was located.

In fact, the government will prove, the greatest part of Albuquerque's growth over the last fifteen years that the defendants were selling this land was in exactly the opposite direction. It was to the northeast. The defendants knew this and they had to know it.

The government's proof will also show that there was plenty of land in Albuquerque and in the metropolitan area surrounding Albuquerque to take care of the growth of the City of Albuquerque without ever having Rio Rancho beneficially affected by this growth. The defendants knew this also, as the government will prove.

When people were on these company guided tours, if they asked about these vast stretches of land around Albuquerque, it was standard company procedure to tell them that this was reserved land or government land. It was land that could not be built on.

The government's proof will show that a visit to the property, either on a tour or individually, would not provide the purchaser with the necessary and relevant information to evaluate the investment potential of these lots, and the defendants knew this because if a purchaser visited the land and was shown these showcase building areas and was still led to believe this is what we are going to do to your land, we are slowly getting there, we are making good progress, it's coming, it's coming, it's coming. So the purchasers always believed that this was still going to be done to their land and the government will prove that.

This land was sold to people who lived outside of the State of New Mexico and who were obviously unfamiliar with the local real estate market.

The government will prove that it was these defendants who knew the true facts, but that they intentionally sold this land on the basis of false and fraudulent and misleading comparisons and statements about the value of this land as a financial investment.

The evidence will show that these defendants registered this land with various states and they also registered it with the federal government beginning in 1969. They had to in order to sell the land.

The fact that the defendants registered the lots in states or with the federal government, the government will show, does not excuse a conscious fraud in connection with the sale of that land and, indeed, as I mentioned to you earlier, these defendants, except Oberman, are charged with violating the interstate land sales full disclosure act.

Now, that federal statute --

MR. FLEMING: I object, your Honor.

THE COURT: Sustained. I will tell the jury what the law is.

MR. FLEMING: Thank you.

MS. HYNES: The defendants were required to register lots, which they did, with the federal government. The statute requires the defendants to make full disclosure--

MR. FLEMING: I object to this, if your Honor please.

THE COURT: Just tell ~~them~~ what you are going to prove and not what the statute requires.

MS. HYNES: The government will prove that these defendants did not make full disclosure to their customers. They did not make full disclosure to the state officials or to the federal officials in connection with the claims that they were making about the sale of this land.

The evidence will show that in addition to registering these lots, the defendants were also required in some states to file advertising. They were not required to file advertising with the federal government, but some states the evidence will show did require the defendants to file advertising.

The evidence will show that the defendants knew and were specifically put on notice that the states did not have the resources or the knowledge or the expertise to verify the claims in these filings and in these advertisements and that the states relied upon the defendants, the evidence will show, to make full disclosure, not only to them but to their customers, and the states relied upon the defendants, the evidence will show, not to use false and misleading advertising.

Again, the filing with these state officials did not excuse a conscious fraud. In fact, for example, the following statement had to appear in offering

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statements which were required to be given to customers in New York and that is called a disclaimer which had to appear on the front of this offering statement and the disclaimer said the following:

"The filing of the statement and this offering statement with the Department of State of the State of New York does not constitute approval of the sale or lease" --

MR. FLEMING: If your Honor please, is the government saying they are going to prove this as a matter of fact and they will be held to those representations?

THE COURT: That is right.

MR. FLEMING: Thank you.

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MS. HYNES: The cisclaimer that is required to be put on and was put on offering statements in connection with the sale of this lot said the following:

"The filing of the statement and this offering statement with the Department of State of the State of New York does not constitute approval of the sale or lease or offer for sale or lease bythe Department of State, or any officer thereof, or that the Department of State has in any way passed upon the merits of the offering."

Now, that was language that was specifically required to be put on those offering statements by the Department of States, and the government will prove that.

The government's proof will show that it was these defendants who knew the facts and not the state officials in New York or Ohio or in any other states that they were selling this land.

For example, in 1965, the defendants hired a land planning firm to do a market study. The company that they hired advised the defendants in November of 1965 and again in May of 1966 that even if Albuquerque doubled in population to 600,000 people -- in 1965 Albuquerque was about 300,000 -- even if Albuquerque doubled to 600,000, the growth of Albuquerque would continue to the northeast and southeast areas of the city and that the west side of Albuquerque would not experience substantial development.

Moreover, the company specifically advised the defendants that there was ample land closer to the City of Albuquerque than Rio Rancho, and that that land was sufficient to take care of the growth of Albuquerque without reaching Rio Rancho.

That firm advised these defendants that even if Albuquerque's population doubled, it would not have an effect on Rio Rancho.

The defendants didn't disclose that information to the states, the government's proof will show; the defendants didn't disclose that information to the purchasers the government's proof will show; nor did the defendants disclose to the states or to purchasers that the planning department of the City of Albuquerque and Bernalillo County, which is where Albuquerque was located, had issued a study in 1964, and the evidence will show that the defendant AMREP Corporation had that study in its files and that study, done by the planning department for Albuquerque and the county where Albuquerque lies, concluded that in the area covered by the report, which was the immediate metropolitan area of Albuquerque, there were vast amounts of vacant land in every section of the

The report went on to conclude that there was sufficient vacant land capable of development within the Albuquerque metropolitan area to accommodate a population of more than two million people.

At that time, Albuquerque had a population of 300,000 people. That was in 1964.

Remember, and the government's proof will show, that beginning in 1965 was when these defendants started those sales dinners, the sales dinners that the proof will show made the pitch that Albuquerque was bursting at the seams and that Albuquerque had no place else to grow except to and through Rio Rancho and that was the reason you should buy this land as a financial investment.

At the same time that the defendants were in possession of a report that said exactly the opposite, the same time, the government's proof will show, the defendants made no effort to disclose that information and did not disclose that information --

MR. FLEMING: Objection.

THE COURT: Overruled.

MS. HYNES: -- to the states where they were filing and did not disclose that information to the purchasers who were buying this land as a financial investment.

Indeed, the government's proof will show that the defendants were making these representations about Albuquerque bursting at the seams until very recently.

The government will prove beyond a reasonable doubt that each of these defendants participated knowingly and willfully in a scheme to sell these desert lots in Rio Rancho as sound and as profitable financial investments, lots which could be resold at substantial profits because they represented that they were going to improve these lots that they were selling to the investors and thereby enhance the resale value, and that there was a demand and would be a demand for these lots because the only direction that Albuquerque could grow as to and through Rio Rancho.

The government will prove beyond a reasonable doubt that those representations were false and the defendants knew they were false.

This case is about people who bought these lots as a financial investment to resell them at a profit. It is those people who the government will prove were defrauded.

This case is not and the government does not contend that there is not a community at Rio Rancho. The government's proof will show that there is a community at

Rio Rancho, that thgese small building areas that were set aside by the company on the company-owned land were developed and that there is a community at Rio Rancho. That is not what this case is about.

The government's proof will show and, indeed, the government will call witnesses who live at Rio Rancho and who are happy living at Rio Rancho. The issue in this case is not whether the people are happy living at Rio Rancho. The government will call people who live there and are happy living there. But the government's proof will also show that the pepole who are living there own additional land as a financial investment and they can't sell that land, and that really focuses the issue in this case.

The issue in this case is not whether Rio Rancho is a nice place to live, the issue in this case is whether the lots that these defendants sold to purchasers at these dinners were a good financial investment as the defendants represented them to be.

The government's proof will show that these defendants are very clever with words, that that is their business.

The government's proof will show that all of the advertising, the promotional films, the descriptions for the speakers at the sales presentations all came from AMREP headquarters.

I urge you to listen very closely, pay attention to every aspect of the evidence in this case, because each aspect of the scheme to defraud is important and was important to the overall success of the fraud as the government's proof will show.

Finally, this case must be decided on the testimony of the witnesses and the documents that are introduced into evidence.

As Judge Metzner has told you, the burden is on the government to prove that each defendant is guilty beyond a reasonable doubt. That is a burden that we willingly accept.

Your burden and your responsibilities as jurors is to keep an open mind as the evidence comes in, to wait until all of the evidence is in and to wait until you have been instructed on the law before you begin to make any determination in this case. That is all anyone can ask of you, that you judge the defendants fairly and on the basis of the evidence and in light of the law as his Honor will instruct you. If you do that, the government submits that you will have no doubt at all about finding these defendants guilty as charged.

Thank you.

THE COURT: It is now 25 to one. I think we should adjourn for lunch.

Return to this room at a quarter to two, when you will hear the openings of the defendants.

(Luncheon recess.)

AFTERNOON SESSION

1:45 P.M.

(Not in open court - jury not present - Ms. Lee Cross and Mr. Devorkin present)

MR. DEVORKIN: This morning before court began the government gave copies of the following 3500 material to counsel for the defendants:

3501-A, a letter signed by Mrs. H. Henry, undated except for a date stamp at the bottom of April 22, 1974.

3501-B, letter dated January 10, 1975, signed Helen Henry.

3501-C, two page letter, dated December 31, 1973, signed Helen Henry.

3501-D, undated letter, signed Mrs. Henry.

3501-E, undated letter, date stamped November 15th and November 17, 1969, signed Mr. and Mrs. M. Henry.

3501-F, an account receipt signed Mrs. Henry, undated.

3501-G, undated letter signed Mrs. Henry.

3502-C --

MS. CROSS: 3502-C --

MR. DEVORKIN: I will read it. Note date stamped received November 29, 1969 signed it looks like Joseph Hampe.

3502-D, undated note, date stamped received October 29, 1969, signed Mrs. Joseph Hampe.

3502-E, letter, dated October 29, 1971, signed Joseph Hampe.

3502-F, letter, dated June 29, 1973, signed Mrs. Joseph Hampe.

3502-G, letter, dated August 17, 1976, signed Joseph Hampe.

3502-B, questionnaire --

MS. CROSS: We did not --

MR. DEVORKIN: You are getting it today.

3502-B, questionnaire from Joseph and Berit Hampe. My apologies.

3510-A, grand jury testimony of Howard Mandel.

3510-B, testimony by Howard Mandel before the Secretary of the State of New York, undated.

(In open court - jury present)

THE COURT: You may proceed.

MR. FLEMING: At the close of court may we put the colloquy that we had in chambers on the record?

THE COURT: Yes.

MR. FLEMING: Thank you.

THE COURT: Mr. Arkin.

MR. ARKIN: Thank you, your Honor.

Your Honor, ladies and gentlemen of the jury and ladies and gentlemen of the defense and prosecution:

My name is Stanley Arkin and I, together with my partners, Ms. Cross and Mr. Arisohn, represent Mr. Hoffman and Howard Friedman, who are defendants in this action.

I am going to be briefer than Ms. Hynes. Let me get down to some basics and some basic facts.

This is a criminal case. The stakes are very high. The question here is whether my clients, together with others, had in their mind fifteen years ago the intent to conceive a swindle, whether they intended to deprive people of their money by a false pretense, whether they perpetuated a fraud and carried that out for fifteen years.

Don't be sidetracked by issues as to whether you like Rio Rancho, but based on the evidence we hope you do, or whether you like the southwest or the idea of people moving to the southwest or whether you like particular sales techniques or even whether you in your own personal opinion think it is a good investment or a bad investment depending upon your own point of view. The issue is one of my clients' and his friends' intent. Did he intend to commit a swindle? That is the issue.

On that issue we are going to introduce, when we come to bat, which will be after Ms. Hynes finishes her case and at some point when we cross examine the government witnesses, we are going to prove that there is no way that these people intended to do anything other than develop a community and sell land and lots for a fair profit; that they did not intend to do anything which was dishonest. They believed in Rio Rancho and they were justified in their beliefs; that the representations which they permitted to be made by the company in its literature and by their salesmen, they believed in them in 1966, 1968 and 1969 and today and will tomorrow and as this trial goes on.

We will prove absolutely that these people never made a promise they didn't keep and, more, there were times when, even without an obligation, they went further just to be decent to people who moved to Rio Rancho, people who bought land.

We are going to prove that for fifteen years these people spent day in and day out their time and their money to develop a community in Rio Rancho, New Mexico and that they did so because they wanted the people who bought that land to get what they bargained for and they saw to it that the people got what they bargained for.

Sure, they were in business to make a profit. That is no crime.

The advertising, which they produced and which they created, AMREP created, it was advertising which was upbeat, it was happy, it was positive, it accentuated the good the way any advertising does. They did not sit around and attempt to paint the most dismal picture of what they were selling. They did not sit around and think of every possible negative for every possible person. That wasn't their job.

That is what has been done here. What has been done here is that Rio Rancho, AMREP, my clients, in an effort by the government have been painted or attempted to be painted as swindlers, a dismal picture has been drawn by the government by a process of turning facts upside down, as we will show, by distorting facts, as we will show, and by the government being very, very clever. The government says my clients were very, very clever.

Well, the government was very, very clever by selecting pieces of facts, bits of facts and making what is innocent look sinister, what is good look evil, and that is what this case is about.

You heard Ms. Hynes say that Rio Rancho, the community that now exists, is a small showcase. It is what makes a scheme possible. And the indictment, I am going to quote from it, Paragraph 14 says that:

"It was a principal part of this scheme and artifice," the one which is charged here,"that the defendants and their co-schemers, in order to create the false impression that they were gradually developing Rio Rancho" and so on built up this small company owned area.

Well, Rio Rancho has been described as a showcase, as a false impression. Let me tell you what that false impression consists of. It consists of over the years, fifteen years,day in and day out, week in and week out of millions and millions of dollars being poured into that community to a point now where it approximates $100 million, a $100 million false impression and that was done consistently. That is what the government is going to have to ask you to believe was a fake western set, a come on, $100 million.

Let me tell you what is there to give you some insight as to what this case is about. That community is a thriving, prosperous happy community, the fastest growing or close to it in all of New Mexico. That community consists of 7,000 people who work and live there, 7,000 people who are participating in a false impression, in some kind of scheme, they are there as actors.

1800 or close to 1800 single family homes, 400 multi-family homes, 60 separate businesses, small factories, large factories and, by the way, factories on land donated in many cases by the company in an effort to attract industry, company land which they gave to people to encourage them to come there and build up that community and make it a better place to live for everybody, make it a better place to own land.

Four churches, again on land donated by the company. There is a medical clinic, gas stations, movie, shopping center, roadways, doctors. There is a motel, a large one. A country club. The best sewage treatment plant in the entire State of New Mexico and one of the best in the southwest.

All these things done, in places there now, and more and more every day, more and more every year, cannot be consistent with an intent to swindle. These people were doing, we are going to prove they were doing what they said they would do and that was to build a community with community centers, swimming pool, auditoriums, tennis courts, again donated by the company to the community, all part of chicanery, all part of a fraud, all part of a swindle. When you look at this case and hear the evidence ask yourselves whether these people would have done this, tens of millions of dollars and all the effort, to perpetrate a swindle.

If this case were taking place in 1961 and it were not today in 1976 and these people had said then, there are going to be 7,000 people in Rio Rancho in 1976, they would have yelled fraud.

These people had vision, they had foresight, they had industry, they created something. That is what this country is about.

Let me tell you something about the creation of Rio Rancho, how it started and how it has grown. In 1961 my client, Henry Hoffman, together with others, had the vision, the thought, the idea that this country was moving towards the southwest. We live here in New York and it is kind of dense. People are moving south, the southwest. That land is opening up. People are migrating out there, the weather is somewhat better than here according to many persons.

Industry was moving there and so they began a search throughout the southwest and they found this piece of land, which I will describe to you more in a couple of moments, and they bought it and they began to sell it.

On that very day that Mr. Hoffman found that piece of land, we will have somebody tell you that he said, not that I am just going to sell it like salami or like pickles, he said, I am going to build a community. That is what my business is.

Day after day for fifteen years that company poured millions of dollars in developing it and hundreds of thousands of dollars into hiring people such as land planners, surveyors, engineers, water experts and others who have only one purpose, which is to build communities, not to participate in swindles, not to do something which is dishonest, but to build communities, which they have built, and are continuing to be built out there today.

You will hear some of these people when our turn comes to bat. You will hear Jose Luis Yguado and Max Flato, one of the southwest's leading land planners, designers, week after week, year after year, who worked with these people to build Rio Rancho, to make plans for all its future.

Certainly not the intention of a swindler. A swindler takes his money and runs. He sells people something they cannot use. He doesn't come through on what he says. Not here.

Let me give you just the flavor of what has happened over the years because when you listen-- I am going to excerpt -- I am going to give you just a bit of what has happened every two years or so out at Rio Rancho since its inception. The idea is to show these people that they had an intent to develop. They didn't just put up a few buildings out there or a trailer or whatever. They built and they built more every year. They stuck to it. They didn't just do it one time.

In 1962 -- excuse me if I read a bit -- there were five homes in 1962. In 1965 there were 117 and the population by then was 200 about.

In 1968 there were 332 homes and about 900 people and the first church was completed. That was the Community Christian Church.

In 1970, two years later from 1968, the population had more than doubled to 2,000 and the homes were 728. That is a significant point.

Towns do not grown in a straight line. People move there, that causes more people to move there, people have families, people need services, that is what happened then and that is what is happening every day at Rio Rancho.

That same year the country club was opened. A $1 million Ampex plant was opened, which is now being used by another company called GTE Lehnkurt and the Post Office, the U.S. Post Office gave Rio Rancho a zip code.

They opened an apartment complex, a shopping center and, listen to this, the national administration headquarters for AMREP had moved to Rio Rancho. What does this mean?

These people were not hiding. They weren't running. They went right to where it was. They put their headquarters out there where they could service these people. They could help build a community. Do frauds stay out in the open and put their headquarters there? It is nonsense and we will show that.

That same year the sanitary sewage treatment plant was also built.

In 1971 there were 904 homes and the population was 2500. The shopping center was opened with 16 separate merchants. They even have a monthly newspaper just for that community.

They opened a retirement center, the National Secretaries Association of this country selected that place as a place to build their retirement center. 102 separate units.

In that same year the Family Circle Magazine selected Rio Rancho as the sight for their dream house -- dream house -- some false impression, something by a national magazine.

A new church came that year, the Calvary Baptist Church.

In that same year there was a feature article in a magazine entitled The American Industrial Properties Report, which described Rio Rancho, and I am quoting as "One of three Rocky Mountain area communities among the nation's best planned, most carefully thoughtout" and even the Golf and Club Magazine said their golf course was the finest in the southwest. Again people trying to do the best, trying to do the best. They didn't have a shoddy golf course and a shoddy shopping center and a shoddy community.

In 1972, over 1167 homes, close to 1200, and the population was 3,000; mobile park opened, elementary school.

In that year, too, about my client Howard Friedman, he was elected to the Bank of New Mexico's board of directors, a man who didn't stay here in New York just selling and not thinking about the community in which he was participating in building. He went out to New Mexico, we will show, he participated in their community activities. He became so well respected out there that the Bank of New Mexico said, "You are good enough for us to be on our board."

In 1973 there were 1320 homes, the population by then was 4,000, again, almost a double in population in two years. A condominium opened up, 180 units, a community center, library, arts and crafts, stage, a third church, and a sure sign of civilization, six voter precincts.

Perhaps even a more explicit sign of civilization and growth was a family planning committee and a Weight Watcher's club, among many other clubs which were out there; Democratic, Republican, Catholic, Jewish; people interested in rocks.

In 1975, there were .646 homes. The office plaza opened, the office building, the sheriff's substation, the Lovelace Bataan Medical Clinic,a very large medical clinic, right there in Rio Rancho.

The realty corporation moved in. In that year, too, the congregation of the Sisters of St. Cantalice, the Felician sisters, officially transferred their headquarters from Ponca City, Oklahoma out to Rio Rancho where they now have this very large building which you will hear described by the man who designed it, Mr. Flatto.

An elementary school opened, again, that year.

In that year, too, very important, a large high school called the finest in New Mexico opened two miles away from thatproperty, two miles away on the northwest mesa, which is where Rio Rancho is situated.

Now, ladies and gentlemen, Ms. Hynes dwelled a long time on what was being sold and how it was being sold. Aside from saying that Rio Rancho itself is a mirage and some kind of false impression, some kind of phony thing, which I will suggest to you the evidence will overwhelmingly disprove, although we don't have that burden but it will anyway, what she says, in effect, is that my clients and the others sold land to people, participated in selling land which really wasn't what it was cracked up to be, they were selling people something which really wasn't worth what they said it was and they knew it.

Keep in mind here the issue, again, is, what did these people have in their minds from day one throughout the 15 years? Did they intend to deceive, to swindle?

And when you think of the evidence here, the issue is really not whether it is a good investment or a bad investment -- we hope to show you it was -- the issue is, did they intend to deceive or swindle?

What is a good investment or a fine investment or something worthwhile all of you know it is a matter of opinion. Different people have different objectives, different desires, different needs. It is hard to make that kind of a thing determinate.

There are people who bought land and they liked the idea that they own something, it is only a limited amount of it, you can't create more land, it is permanent, you can pass it on to your children, it is always there, they like the idea of owning land which is right near Albuquerque, the pride of ownership. That is one kind of investment.

Or did they like it because it gave them an alternative. At some point, maybe being fed up with Ohio or New York or Massachusetts, it gave these people a place to move if they wanted to. It gave them an out, a different kind of investment, something which gave them an alternative for a different way of life in the future.

Can you say that selling to somebody who has that purpose is a swindle -- or to somebody who has that purpose, I should say?

I described to you what is presently at Rio Rancho and how it got there. Let me tell you a little bit about the property other than that which bears very much on what my client and the others had in their minds when they sold this land, because you have to judge their intent.

This land, unlike the suggestion which may have been passed on to you,is not remote, it is not on the moon. Indeed, as Ms. Hynes carefully omitted to say when she was discussing the Albuquerque metropolitan area, Rio Rancho is within the Albuquerque metropolitan area. That's an official proclamation, a government proclamation.

We didn't do that, not my clients; that was done by the government. And that is for census purposes, population purposes, transportation purposes, school district purposes.

And where is it? 20 or 25 minutes by super four-land highway on down the pike from Rio Rancho to midtown Albuquerque.

Try to do that from lower Westchester to the lower East Side Drive to midtown Manhattan in 25 minutes. You'd be dead.

Rio Rancho is situated on what will be described to you by witnesses as a beautiful mesa which overlooks or slopes downwards toward Albuquerque. An eastern view of the property are mountains which, again, will be described as utterly beautiful called the Sandy Mountains. In the evenings, from most parts of the property you can look down to the City of Albuquerque and see a carpet of lights. It's close.

You heard Ms. Hynes suggest to you that it was a lie to suggest to people that the expansion of Albuquerque would somehow have an impact on Rio Rancho. In the course of this trial, I just appeal to your common sense.

Would a suburb of a large growing city be impacted or affected by the growth of that city?

We will have an expert who will come in, a man who studies these kinds of things, and tell you it most certainly does and to say otherwise is utterly foolish.

Ms. Hynes suggested it was a lie to suggest that this property was in the path of Albuquerque's growth. It was a lie in 1961, says Ms. Hynes, it's a lie now. There is a lot of other land.

There may be other land. Every city has vacant land. But cities grow in particular directions.

In point of fact, Rio Rancho Estates, we can demonstrate graphically, that Albuquerque is growing towards Rio Rancho. It has happened. It has happened since 1961, it is happening today and it will happen tomorrow.

We will bring people in who will say that, businessmen from Albuquerque who know the area who have no axe to grind, experts who have no axe to grind. Publications said it years ago.

Sure, you are going to find some expert the government may produce or some book which says to the contrary. But the burden of the evidence will be that that's a fact. That's what is happening.

Let me say more, the issue is, were my clients justified in permitting that to be said? And the answer is yes, because many people said it. And that's what you will find from the evidence overwhelmingly.

I should also point out when you consider what these people were selling, it's not a little matter to consider the good weather they have out there. They don't have the snows and the cold, they don't have the moist summers we have. I am not suggesting I don't love New York, but I am saying to you that for many people the weather there in that part of the world is a very important thing to them. That's one of the things they had in their mind when they were selling this land right in the Albuquerque metropolitan region and right near Albuquerque.

You also heard a great deal from Ms. Hynes about the exchange concept. She says it couldn't have been a good thing to sell, they knew it because they told people that they would have utilities in their land and they didn't put the utilities in and they haven't put any utilities in and whatever utilities there are they took the money from the sales and they put the utilities into the company owned areas.

Well, let me see if I can put into focus what our evidence will show and suggest to you that Ms. Hynes did not tell the entire story on that particular question. Our evidence will tell the story.

Every person who bought land at Rio Rancho, every potential customer, was told absolutely that you are buying land which right now does not have utilities, except for those few, a certain section where they did buy land with utilities. As the case goes on you will learn about that. But the evidence will show generally that people bought what Ms. Hynes rather unhappily refers to as raw desert land.

And, by the way, the land is not desert land. It is not desert land at all. This is not Death Valley. Don't let that phrase stick in your mind. Look at the pictures of it and look at the evidence about it and hear what the people say.

Don't let those kind of things affect you. You are here to sift out the facts. It is not desert land.

This exchange was told to every person. They were told you have a right, a contractual right which goes along with the property you buy, that if you wish to move to Rio Rancho, if you wish to build out there, we will take your lot and we will give you a lot in an area in which utilities are already implanted.

The utilities, to say they were in company owned area, is misleading. In point of fact, they were in what is called core areas, and these core areas were reserved so that when somebody wanted to move and they wanted to build a home, they could exchange it into that area and they came to own that land.

By the way, the churches and the factories and all the people there own their land. That land is owned by the people who bought lots and then exchanged them and moved there.

This exchange provision has worked for thousands of people. The company has never failed to honor its obligation. And there is some reason beyond this exchange concept.

When you have a large piece of land -- you saw Ms. Hynes brought that map out -- you are not going to put water lines, electrical lines haphazardly around the piece of property. The idea here, as experts will tell you, as I am sure your common sense will -- is to develop this property in an orderly,progressive, efficient manner. And what's happened is that there were first a few homes and then more people and the utility lines began branching out every year, more power lines, more water lines.

The point is that unless you develop in an orderly fashion, what you are doing is wasting money and you are wasting assets and you are wasting our own natural resources here.

The purpose behind this is to enable Rio Rancho to develop in an orderly manner, and to turn this upsidedown and attempt to make this a part of some sinister plot I say is symbolic or symptomatic of what the government's case is all about, turning everything upsidedown.

Now, you heard a bit about financial investment, that is, it wasn't a good financial investment, suggests Ms. Hynes, because people didn't double or triple their money.

This company, these people, forbid any of their salesmen or anybody else to say people would make any particular amount of money. That was forbidden.

You people should know, and I suggest to you and I will show you, that land is not liquid. It is a finite thing. It is not the kind of a thing you can sell overnight.

And as for a resale market which you heard a good deal about, let me tell you, this company never told anybody there was a resale market, and in 1969, in this state, in New York State, what happened was that in the particular report, property report or offering statement, rather, that every customer got, every customer who went to the dinner parties or wherever they went who bought land got some document, had right in it a statement that it may be difficult for resale because it was obvious the company was still in the process of selling, the company had not then sold out, it only sold out one time before in the original acreage, they hadn't sold out then at the point the statement was made.

They are telling people, "We are in competition with you. We are better sellers because we have advertising, we have salesmen."

And yet despite what these people have fairly, very sensibly told the prospective customers, in point of fact, as we will show you, there was a resale market.

Over the years people who bought early on were able to take the land which they bought and make sizable profits, some people got what they made, some people lost money. It is no different than any other purchase.

The point is, there was a resale market and to say it was non-existent is not so, and we will prove it is not so.

Another aspect of financial investment. When this land was bought -- you think about it -- people were able to get in for a relatively small down payment and they paid it off in a very moderate sum month after month, and they were able to use this in many cases as a full or part payment on a home, a single-family home. Just think to yourselves and see if that can be done somewhere around New York. They took this land that they had and paid off a small amount and were able to get into a single-family home.

Aside from things I just mentioned to you, we are going to prove by expert testimony, appraisers, people who go out and they appraise land and they appraise homes and so forth, that the land at Rio Rancho has real and substantial value.

These appraisers are going to come in and they are going to say they have done a study and that the land is valuable and that the value is increasing every year.

We are going to bring in an appraiser who, before this case ever started, was doing appraisals for banks or for estates or for lawyers.

I am sure you know what that is. When somebody dies and somebody wants to know what something is worth, this man was hired. No axe to grind.

This man did appraisals of Rio Rancho land, again, substantial values. Nobody spoke to him. He did this for people who don't know anybody here.

Again, you are going to hear bank appraisers or a bank appraiser, a county tax appraiser. All of these people will tell you that the land there is valuable, it is becoming more valuable and it is becoming more valuable because the way land becomes valuable is by development.

You know, I promise you that Adam and Eve or Christopher Columbus did not have a hot dog or a Chock Full of Nuts in New York. It had to be developed.

What made land valuable was development, and that is what is happening there. They are building in Rio Rancho and Albuquerque is expanding and people are building in the area near Rio Rancho. It is getting to be a more active area and land prices are going up.

I should also point out to you that while Albuquerque is expanding, that the rate of expansion of Rio Rancho, which draws upon not just an Albuquerque market but a national market because it has 45,000 customers, is expanding more rapidly. I pointed out to you how it doubled in population in a couple of years, four years in a row.

You heard Ms. Hynes say that somehow this couldn't be a good investment because they bought land in year one, 1961, for 100 some odd dollars an acre and ten years later or nine years later they bought it for $2 more an acre.

Let me say to you that when you buy something in wholesale, great bulk, you all know, you know you buy it differently. You buy it more cheaply. That is a concept of wholesaling.

But aside from that, it is not fair and it is misleading to utilize that as any kind of analysis as something for you to have reference to, because it doesn't take into consideration the enormous costs -- I mentioned approaching $100 million -- the enormous costs of surveying and staking the roads, new highways in the property, planning costs, one planner meeting every week for years, community facilities like wimming pools, the initial costs of utilities, the staff, maintenance, construction, administrative, the fact they subsidized a fire and sheriff's station, and also the advertising, the promotion, which is not something you should forget.

When land becomes more famous -- let me put it a little more differently.

If you own a piece of land, as the evidence will show, and you hear that land advertised time after time in a happy way, you are going to be happy because that makes your land known to people and contributes to its value. We will have people tell you that.

Let me go on to another aspect of this case.

You heard Ms. Hynes suggest that there were high pressure sales techniques, that people were coerced psychologically into signing a contract that night and that this somehow shows that there was a sinister plot afoot.

Let me tell you and cut right through the smoke; because that image creates a false impression and we will show you why.

Anybody who purchased that night or any other time first, by law, has a 48-hour period which they call "cooling off." That is 48 hours right there by statute.

But this company went further. These people went much further. What they did was give everybody right up front an option that if within six months from the day they purchased they went out there and looked at what they bought and they didn't like it for whatever reason, they didn't like the climate, they didn't like the soil, they didn't like the view, they didn't like the plane ride, they could cancel and get their money back. Everybody was told that.

And it is some indication of how this case has been turned upsidedown and facts which should be innocent and decent the prosecution is attempting to make them look sinister and evil. The prosecution says that was a come-on.

What they said is, "You can come and see the land because we want to sell you more land or induce you to buy now," was a sales device, says the prosecution.

What swindler, I ask you, and consider, would give somebody six months to go out and see exactly what it is they bought and six months to cancel? Think about that.

And do you know something, the company went further. They encouraged people to go out to Rio Rancho. They made their tours easy, cheap, efficient. They encouraged people to go out there and stand on their land, taste it, feel it, see it, look around.

What swindler would say, "Look, here is what you are buying. Take six months and think about it."

That is some high pressure. Nonsense.

That is fair, that is decent. You think of how much time you get to change you mind when you are thinking about buying a car or a loaf of bread or anything else.

Now, this particular cancellation privilege as I have just mentioned to you was discussed by Ms. Hynes in connection with the company sponsored tours.

Ms. Hynes suggested the evidence would show somehow these people who went out there were prisoners of Rio Rancho and that ear plugs were put in their ears and blindfolds across their eyes, chains across their arms and they were kept from seeing what Rio Rancho was about.

Well, we are going to bring in plenty of people who are going to say to you they went out there, they could hear, they could think, they could talk, they could feel and they weren't prisoners, they really saw what it was and they made up their own minds. And there were many people who kept the land -- most of them kept it, the overwhelming percentage, and there were many who bought more -- we will show that -- and there were some, a few thousand, who cancelled and the company gave them back their money. There is no problem. That is what the evidence will show.

Ask yourselves, would somebody with intent to swindle put that in a fraudulent scheme, that privilege?

And do you know that tens of thousands of people exercised that privilege, went out there and saw it as they were encouraged to do.

I must say to you that the government seems to be suggesting that its evidence will show that tens of thousands of people do not have the maturity, the intelligence to make a decision on seeing exactly what it is they bought, seeing exactly what it is they bargained for. The government theory, the government evidence seems to suggest that John Q. Citizen, you and I and everybody else, are nit-wits, morons and can't make a decision. That is offensive.

Now, there was something more to show how fair and how decent and how upright and non-fraudulent the method of sales was, and let me tell you about that.

Every piece of literature, meaning the brochures, the advertising, the offering statements, all of these pieces of literature which contained, by the way, all of the claimed misrepresentations which Ms. Hynes told you about, all of them, prior to the time any one of them was ever shown, ever read to any customer or potential customer, was submitted for approval to a state agency, particularly in the case you will be concerned with, New York State, the Department of State. Every piece of literature used has a NYA number. Remember that as the exhibit comes in.

Ms. Hynes seems to suggest, going around the edges, somehow these agencies were misled, somehow we knew that New York State Department of State, that New Jersey Department of State, that Illinois and on and on all were incompetents. That's what she says the evidence will show. And part of this swindle, these people made an appraisal that all of these state officials were incompetent and had no information or were misled.

Well, we are going to show that these state officials, these offices, didn't merely accept the word of the defendants of the corporation, they sent out independent inspectors, particularly New York State, who trod upon the property and saw, smelled and felt it themselves, checked in Albuquerque and read every line of advertising and approved it. They approved the advertising.

Sure, Ms. Hynes talks about a disclaimer. Well, nobody expects New York State to endorse the purchase of anything. It's a public -- it's a government. They don't go about saying to buy cars or buy land or anything.

But she sure did look at the advertising and they sure did approve it. They sure said it was okay.

They did more. They even monitored dinner parties.

The point is, how can people who are engaged in a swindle and intent to swindle and intent to deceive operate as these people did out in the open in the light of day?

Everything, everything which the prosecution complains about was, in effect, approved by a government agency right out in the open. They weren't secret. They weren't selling whatever in an alley. They weren't playing card games under a rug. These people were operating in a closely, very intensely rated industry out in the open. We will prove that, every line.

This company was responsive to whatever a public agency wanted them to do. If a public agency said change it, they did. They never sought to deceive.

Let me tell you a little bit about my individual clients because I am not dealing with blocks of wood here, nor are you.

I represent Howard Friedman, who sits in the back against the wall, and Henry Hoffman, who sits in this chair. These are real people.

And among the other evidence we are going to adduce, we are going to show you, talk about Howard Friedman first, a decent man, a family man, a man with children, a man who worked hard his whole life and worked here in the city, Seagate. And he has devoted a large part of his life to helping build this community, put his heart and soul into it. He had the vision to do it. He is a man who has devoted a lot of his life to community activities, religious activities out in Long Island and here and in New Mexico.

And Henry Hoffman, the same kind of man, decent man, creative man, a man who devoted a large portion of his life day in and day out helping to build Rio Rancho, and in about 1969 or 1970 he began to create other creative endeavors and you will hear about that.

But these are not men who are made of the stuff of swindlers and you will hear and you will hear people tell you that and give you those opinions on that.

Let me say to you that we are going to prove that this case, this case the government has brought, is an upsidedown distorted misuse of facts. It's very, very clever, but it is outrageous and it is cruel and we thank God, we are deeply appreciative we have a jury here making the decision as to who is guilty; that the prosecution here is not both the judge, the jury, the hangman and the prosecution.

MS. HYNES: Your Honor, I am going to object. This is argument.

THE COURT: Overruled.

Mr. Lavinsky.

MR. LAVINSKY: Your Honor, counsel for the prosecution, counsel for the defense, ladies and gentlemen of the jury.

My name is Larry Lavinsky and I am here to speak on behalf of AMREP Corporation.

Before I begin, I would like to introduce my colleague, Lois Thompson, who is sitting in the back by the window at the defense counsel table. She will be working with me at this lengthy trial.

The problem with representing a corporation in a criminal case is that it is an odd official creation of law. It doesn't have a body, it doesn't have a soul, it doesn't have feeling, it can't be deprived of its liberty and, as a result, people tend to think that it doesn't really matter what happens to a corporation; that it can be dragged through the mud and that no one can be hurt.

But a corporation has a reputation that the law recognizes and that the law protects, and perhaps even more important, what hapens to a corporation can affect the lives of many, many people.

For example, AMREP Corporation is a publicly held company. It has 7,500 stockholders. It has 930 employees. It provides services to the over 6,400 people living at Rio Rancho, and it will play a vitally important part in the further and future development of that community for the benefit of its over 40,000 land owners.

Now, Mr. Arkin has given you a broad survey of our case. I am going to concentrate and talk with you about a single charge of the prosecution, and that charge is that the defendants represented Rio Rancho to be a planned community when they never intended to develop such a community.

Now, that charges goes to the very heart of whether these defendants were acting in good faith, and when the evidence is in, it will show you that that charge is purely and simply false.

(Continued on next page.)

From its beginning Rio Rancho was developed in a planned and in an orderly manner. Roads were planned and built. Residential lots, mostly one-half acre in size, were surveyed, they were marked, drawings were made of their boundaries.

Areas were set aside for public use such as parks, public schools, houses of worship. Over the years Rio Rancho retained no less than three planners.

In 1963 they retained a former planner for the Albuquerque Planning Department. His name was Jose Yguado, a fine planner, and he prepared a comprehensive plan for the development of the 55,000 acres which then comprised Rio Rancho.

At about this time land was designated for commercial, for industrial and for multi-family use at Rio Rancho.

Now, in 1966 a Colorado planning firm prepared a report which combined market strategy with proposals for a development of a small area of the property.

In 1969 another prominent Albuquerque planner by the name of Max Flatto began to prepare a series of plans, not one but a series of plans for the development of specific areas at Rio Rancho.

He provided services over a period of years

eojw 2

for which he received almost a quarter of a million dollars.

Now, that is hardly the kind of money that people would pay if they had no intention of developing their property.

Now, you may wonder why did Rio Rancho bother getting a number of plans. Why didn't they just have one? It certainly would have been a lot cheaper to do it that way, but the point is that development plans are not intended to remain static. What they really are is flexible guide which permit change as planning concepts and as needs change.

As a matter of fact, I was looking through some papers and I found an excellent quotation from a well known planner and he puts it very well, a lot better than I can and I am going to quote it to you.

MS. HYNES: Your Honor, is this something Mr. Lavinsky will prove?

THE COURT: Aren't you?

MR. LAVINSKY: I can certainly point out the quotation. It is a very brief one, your Honor. It makes the point.

THE COURT: If you are not going to prove it, that is a summation and not for openings.

MR. LAVINSKY: Your Honor, I believe we will be in a position to be able to.

THE COURT: I have ruled on it now. Unless you are going to put somebody on the stand to testify, you cannot use it. You may use it in summation.

MR. LAVINSKY: I will take it on myself, your Honor, I will not mention the quotation itself.

The substance of it is that to stick to an outboard plan is the height of stupidity, purely and simply.

Therefore, planning at Rio Rancho did not remain frozen. It was a dynamic and evolving process and it is continuing to this very day and we are going to prove that, every bit of it.

Now, you are going to hear more about planning at the trial and you are going to learn how Rio Rancho became a living reality.

I want to spend a few minutes, however, discussing with you how planning was translated into orderly development even though land was being sold in many parts of Rio Rancho.

Obviously if homes were built helter-skelter in a haphazard way there could not have been an economic and efficient installation of utilities, community facilities and services would have been scattered and the end result would have been urban sprawl.

We see that in our big cities. We see it here in New York. It is a plague of every major municipality The end result here, too, if there had been this helter-skelter and haphazard development would have been an urban sprawl, which is the very opposite of planned development.

Now, the genius of the approach of planning at Rio Rancho was the exchange privilege afforded to each purchaser of one-half acre of residential lot.

Under the exchange privilege, if the purchaser was ready to build a home before utilities reached his or her lot, that lot could be exchanged for one in the developing area already served by utilities. It was in this way that scattered sales were converted into orderly and planned development.

One of the remarkable things about this case is how the prosecution has attempted to turn this ingenuis approach to development into one of the major elements of the crime. I believe Ms. Hynes this morning called it a key element of the fraud or something like that. You will pardon me if I don't have it exact, but something to that effect and the pitch is only too simple. You have already seen it. Ms. Hynes parades a huge map, she shows you 91,000 acres at Rio Rancho and she shows you the comparatively small development area. That is the small

eojw 5

development area to date. It is in the process of growing and it will continue to grow.

This is supposed to constitute a crime.

Now, if there had been scattered development all over the property, this kind of charge couldn't have been made. It would have been avoided, but scattered development would have destroyed the defendants' goal of developing an orderly and a planned community and that is what it is and that is what it is going to be into the future

Now, I will have an opportunity to speak with you again when all of the evidence is in. This being the Bicentenial year, I want to leave you with a thought from the Federalist Papers.

MS. HYNES: Your Honor --

THE COURT: Mr. Lavinsky, this is not summation It is an opening in which you merely outline facts which you are going to prove. I am not interested in hearing any quotation regarding the Bicentenial celebration.

MR. LAVINSKY: Ladies and gentlemen of the jury, I have told you in very brief summary form the facts that we intend to prove in connection with the planning and in connection with the exchange privilege.

As I say, I will have an opportunity to speak with you again at the close of the case and at that point we can discuss the evidence and that evidence will establish precisely what I have said. That this is indeed a planned community. It always has been a planned community. That the exchange privilege is an integral and vital and ingenious part of that community and that it is in no sense any part of any fraud.

Thank you.

THE COURT: Mr. Hoffinger.

MR. HOFFINGER: Judge Metzner, my colleagues at the Bar, Mr. Cuccia, ladies and gentlemen of the jury:

I know that you won't be distressed when I tell you that my remarks will take about three minutes.

My name is Jack Hoffinger. My partner assisting me is David Bernfeld. We represent Mr. Irving Blum.

Now, you heard what Mr. Blum is charged with. He has asserted his innocence to that charge by pleading not guilty and that is why you are here today to determine whether the lawyers representing the government in this case, Ms. Hynes, Mr. Kaufman, Mr. Devorkin, Mr. Kaley can convince you beyond a reasonable doubt that Mr. Blum wilfully devised a criminal scheme to defraud together with all of the gentlemen who are sitting there who are similarly charged. A criminal scheme to defraud people nationwide beginning in 1961 in full view of numerous state and federal agencies.

I submit to you that the evidence will never convince you of that because it never happened.

Mr. Blum was never part of any criminal scheme to defraud anybody. Mr. Blum is a substantial and responsible citizen with a spotless reputation who made an investment in a substantial, legitimate, ongoing enterprise, which is ongoing this very day.

He resides in New York City with his wife. He has a family, which recently includes three grandchildren. He is seventy-four years old. He is a certified public accountant who maintains offices at 1441 Broadway where up until three years ago he maintained an active accounting practice.

Now, Mr. Blum is chairman of the board of AMREP Corporation. That title was conferred upon him in 1968. The evidence will disclose that it is essentially a title and nothing more.

It was conferred upon him early in 1968 when he was sixty-six years old as a kind of honorary position. Some people would call it emeritus. After he had been treasurer and president of the corporation.

Although he wasn't officially severed from the company in early 1968, for all practical purposes he

eojw 8

was.

Now, Judge Metzner indicated to you at the outset that this would be a lengthy trial. You will hear lots of evidence and see lots of documents some of it confusing, some of the conflicting, but I submit to you that after you have heard all the evidence and see all the documents and listened to all the arguments, you will wonder, as Mr. Blum does, what he is doing sitting in this courtroom charged with this crime as he approaches the end of an unblemished life.

Thank you.

THE COURT: Mr. Rubino.

MR. RUBINO: If your Honor please, Ms. Hynes, gentlemen of the prosecution, all attorneys, Mr. Cuccia, ladies and gentlemen:

As you hear the evidence unfold before you a jury sometimes seems to forget that there are human beings whose lives and whose integrities and whose honor is laid before you, and I hope that you will bear that always in mind.

These are not disembodied people we are talking about but human beings and let me describe my defendant, Herman Oberman, who sits there now.

Mr. Oberman was raised in New York City. He reared his family here. Attended schools and college in New York. He married a lady in New York and has been married to her now for fifty years. He has three children. He has grandchildren.

Twenty-six years ago he left New York and took up permanent residence in Florida. There he developed an interest in real estate and in real estate developing.

As you now have heard from Mr. Arkin, from the prosecutor, in 1961 he, among others, became interested in Albuquerque and what is now Rio Rancho Estates.

Mr. Oberman's function in respect to Rio Rancho was to attend to the physical development. I will not repeat here what Mr. Arkin has so eloquently said as to what this land has become.

Mr. Oberman in great measure bears the responsibility for the physical development of that area. This is not,as you have been led to believe, a useless wasteland. You have heard it said and it is quite true it does now have park areas, recreational areas, there are very, very few of the wants of a happy life that are not now satisfied there.

For a brief period Mr. Oberman was president of this company, for about one year, and he resigned as president and remained a director for another year and since 1963 he has been only a salaried employee of this corporation.

You heard Ms. Hynes tell you that in 1969 he retired and indeed he did retire. He severed all relationships with the corporation and his relationship with the individual defendants has only been on a personal basis since then.

Now, he spent most of his time in Rio Rancho and never came to New York. As I said, he was a planner.

Now, what has he been charged with? As Ms. Hynes has told you, he has not been charged with land fraud violations. He has been charged with a mail fraud scheme. The mailings took place in 1971. He was then two years out of the company. And in 1974 and '75 and he was then many years out of the company.

You have been told by my colleagues the test you will use in evaluating the innocence or guilt of each ofthese defendants.

You have heard Ms. Hynes invoke the majesty of government as she has described this case to you. This is indeed a charge by the United States government, but that is a form. It is a ritual ., but the government is in this courtroom. The government is in thi courtroom demanding from each and every one of us, Judge, jury, prosecution, defense attorneys that we be honest, that we be candid, that we be forthright. the government does something more: It cloaks Mr. Oberman and it cloaks each and every defendant in this courtroom with a mantle of innocence that we call the presumption of innocence which is never touched at any time until your final word and that presumption I am confident will then be reduced to fact when you resoundingly declare not guilty.

Now seven years after his retirement from the company, Mr. Oberman is asked to come to New York, leave the comforts of his home in Florida to face what I am sure you will conclude is a baseless and completely unwarranted charge against him.

THE COURT: Mr. Glendon.

MR. GLENDON: Judge Metzner, Ms. Hynes and members of the prosecution, my colleagues at the defense table, Mr. Cuccia, ladies and gentlemen of the jury:

My name is Glendon and I represent Mr. Solomon Friend, AMREP's general counsel since 1970 and a member of the Bar of the State of New York and other courts for some twenty-eight years. Mr. Friend is sitting there. Together with my partner, Mr. Weidner, we represent him in this case.

Mr. Friend's defense to this indictment is simple. He says there was no fraud here and he says that he never had any intent to commit a fraud. That he has acted throughout this time, the last five years that he has been associated with this company, in good faith as its counsel seeking to advise them in a way to obey the law, to stay within this closely regulated business so as to follow the rules and regulations and do everything that the company can and should do to treat its customers fairly and that is what was done here.

I would like to tell you a little bit about Mr. Friend. As I said, he has been a member of the Bar for some twenty-eight years. He graduated with honors from the New York University Law School. He was honorably discharged as a first lieutenant in the Air Force after World War I.

He resides in Great Neck, Long Island with his wife and four children.

He practiced law here in New York in this very court and other courts. He was a trial lawyer for some twenty years before coming to AMREP in 1970. He was highly regarded and highly respected and still is.

He lectured at various institutions and universities on his specialties. He was a lecturer at the Practicing Law Institute here in New York.

He has led an exemplary life and has achieved a reputation for competence, ability and integrity at the Bar and in the community and, but for the shade of this indictment, he would be sitting here at counsel table today as AMREP's general counsel helping it and assisting it in every way in its defense and instead of that, as I said, he is sitting there having to concern himself with his own self instead of that of his clients.

His position is a little bit different and I want to explain that to you as to how it is. As I said, he came to AMREP in 1970. Before that he had been in private practice.

He became general counsel of the company and he also had the title of vice-president and senior vice-president and a director. He was not, however, a policy maker of this company. He was not a member of the executive committee. In this area, which is a sales case, he had no sales responsibilities.

In another respect, too, his position is different. Coming to the company in 1970, some eight years after this company started selling land, his position is different in that respect.

He did not have any part, of course, in the original subdividing or buying of this land and had no part in the concepts, business concepts, which grew up and which the prosecution tells you are elements of this case.

by saying that I do not mean to suggest in any way that he thinks there is anything wrong or we think there is anything wrong, but the calendar facts are that Mr. Friend was not in this company for some eight years during the period of this claimed charge.

The procedures, the sales parties, tours, the refund provisions all were in existence before he came there.

Now, the government says, as you heard this morning, that Mr. Friend occupied executive positions. I don't know what that means. He was the general counsel of the company and, as I said, he had the title of vice-president. The executive positions that I know about and I think the evidence will show you here and what he did do in this company, apart from acting as general counsel, was to assist, supervise and coordinate the development, which you heard about from Mr. Arkin, and I think he did it and his contribution to it was substantial, but in terms of what his executive positions were, I just don't know.

I would ask you, as you listen to the evidence in the case to listen very carefully to dates and when you look at documents look at the dates because any evidence that may come in in this case that came into being before 1970 is not being received against Mr. Friend.

I will ask you also when you hear evidence in this case to consider does it say anything about Sol Friend? Does it relate to him in any way? I think you will see, as you listen, and if you will do that I am sure you will, that there is no evidence whatsoever against Mr. Friend and there is no suggestion by saying that there is any evidence against anyone else. My responsibility here, of course, is to Mr. Friend.

Let's look at the evidence just a little bit in terms of what was AMREP when he joined the company. Mr. Friend coming with the company in 1970, did he have any reason to believe that he was leaving his private and successful practice of law to join what the government says is a scheme to defraud? AMREP in 1970 was a large, substantial, respected land development company. It was listed on the Stock Exchange. It had some 1500 employees.

It was represented by competent and able counsel and Mr. Edward Winslow, who was a partner in the firm first with Royall, Koegel & Wells and then thereafter the firm of Jacobs, Persinger & Parker. This is important because the work that Mr. Winslow and his associates did in these firms was the work that set up this company and guided and advised it all during the period prior to Mr. Friend's coming there.

I mentioned regulations and you heard them before, but the land industry is closely regulated. These companies have to submit to both the federal and state government's filings, documents in which they lay out their business, their finances, what they are doing, and they have also to do the same with the states.

Then you have heard the words today they have property reports, offering statements and these documents will be put into evidence and you will see here both of these documents, here is an offering statement filed with the State of New York and here is a copy of it filed with the federal government. Both of these reports lay out in great detail what these companies are, what they do and the customer is given this and he is encouraged to read them.

These documents were based on and were the work of the lawyers who were with and guiding this company before Mr. Friend came there. They were negotiated and worked out with the regulatory agency, the federal or state government as the case may be, and Mr. Friend inherited these when he came to the company. There are, I think, documents that if the customers would read them, we wouldn't be sitting here today.

Mr. Friend also when he came with this company knew that it was regulated by the state and federal government and knew, too, that all the advertising that you heard that was used by these companies was submitted to the various states and each document had to be submitted to the State of New York. He knew that, too.

When he came with this company knowing that it had been represented by competent counsel, knowing that it was closely regulated in all respects by the federal government, which sits here now and tells you it wants to prosecute this company, and by the state government, he had no reason to believe there was anything wrong with this company. He had ever reason to believe, then, as he does today, that this company was a legitimate, honest company providing a valuable property and it was doing a good job and there was no basis for any criticism.

Now, I told you a little bit about what Mr. Friend didn't do and the fact that he had no connection with the company and he wasn't in on the origin of the business or the business concepts. Let me tell you a little bit about what he did do when he came with the

eojw 18

company in 1970.

As I tell you this, and this will be evidence in the case or we wouldn't be telling you, ask yourself, are these the acts of a man who is engaged in a fraud, a crook, a swindler, a schemer trying to defraud people?

When he came with the company his object and the purpose of his employment by his principals was to set up a legal department inside the company. It didn't have one at that time. His job because of the close regulation that this company had was to hire lawyers and make sure that the company was able to comply and did comply with the varying rules which conflicted in some cases and were different in other cases all throughout the country.

Now, if you are engaged in a fraud, I suggest you don't start out in the middle of it and suddenly start hiring a bunch of lawyers to keep you engaged in that fraud.

He recognized that this was a closely regulated business and he recognized, too, that the regulatory climate was changing. The regulators were getting more intense and so he set up a procedure, this is Mr. Friend and again I wonder whether they suggest this is the act of someone engaged in a fraud, to set up his lawyers to review the advertising that they submitted to the public. He set up a procedure where these lawyers, these people that he hired for his legal department, they were authorized to review this material, if they didn't like it, they could object and send it back. They were required to check the facts and so forth that were in them and they were signed before they were submitted for the state's approval. Again I want to stress that each piece of advertising promotional material that the government tells you was misrepresenting, fraudulent, omitted to tell the truth, all this was reviewed by the government, the state governments.

Now, you have heard, too, that somehow the state governments weren't competent, but there were some thirty-seven states where material had to be submitted. New York State, for example. Every piece of advertising had to be submitted. It wasn't submitted to some little man in a green eyeshade who just put a rubber stamp on it. These were submitted to hard-eyed legal people who knew what they were doing.

New York, for example, inspected this property, went out and looked at it, spent time out there and you will hear and see reports as to what the inspectors found. They knew what they were doing, they were competent people and they looked over this material and they would either approve it or send it back.

Now, you were told, too, I think this morning, that the company was very clever with words, I think was the expression used. Let me tell you the evidence will show here that when material was taken down to the State of New York in many cases New York's words, the State of New York's words were put into this material. They would rewrite, they would literally rewrite material that they didn't like and wanted changed.

When we are talking about words, let's put the record straight, the words in some cases at least were those of the State of New York, the people who the prosecutor would tell you didn't care or didn't work very hard at it or didn't know what they were doing.

Now, in addition to setting up this procedure where his lawyers would check this material Mr. Friend hired a fact verifier. Is that again the act of a fraud? This man was required to check and verify facts that went into all the literature put out by this company. If there was a mileage question or a statement of this fact or that fact, he had to verify it. He had to check out there at Albuquerque and find out and make sure it was true and stated accurately. Again I suggest not the act of one who is trying to perpetrate a swindle on the public.

Although he didn't have any sales responsibilities, he did suggest and he urged that a training program be set up for the salesmen so that they would understand more thoroughly what they were selling and how they were to sell it. He understood that this was done.

He set up a complaint department because, as in any business, you do get complaints. This company at one time, I think, had something like 400 salesmen. They could make mistakes. They could misunderstand or perhaps they could get so enthused with their duties that they would engage in a little hyperbole, but when complaints came in, the purpose of this complaint department was to find out, A, to take care of the complaints, to see they were verified. Some people came in with complaints that were not justified. Other perhaps did or didn't understand and the object of setting up this complaint department was just that, to see that if there were problems in any place, they could be localized, they could find out who was doing it so any salesman who was involved in that could be disciplined or, if necessary, fired.

Again, this is what Mr. Friend did and I suggest to you these are not the acts of a person who is trying to perpetrate a swindle. If this company was engaged in a swindle, Mr. Friend should have been fired because he was out trying to make sure that the company did what was right. That they obeyed the law and they obeyed the regulations of all the stated.

You have heard a little about the documents that were required to be submitted to the prospective purchasers. I have shown you a couple. Let me just refer to one of them.

This is a property report, which is put out by the company, required by the federal government, and it was in 1971. This came with the sales material at these meetings, these parties that you heard so graphically about this morning. We didn't hear too much about these property reports, but they were given to each person and receipts were taken from each person. They had to sign a receipt that they got this.

What does this document say? Among other things, it says it is in the interests of the buyer to inspect the property and carefully read all sales documents.

Now, I suggest that if they would read the sales documents and they did read the sales documents and as you have been told they had a period when they could

eojw 23

come back and say, we decided we don't want to buy this property, they had forty-eight hours after the dinner party, they had six months to go out and look at the property, so they had adequate time if they were interested, if they had any interest in what they purchased, this property they purchased, they had the facts laid out before them.

I have no basis for knowing what the government is oging to prove happened at the sales meeting other than these highly colorful stories we heard this morning, but if they read these documents, I think there would be no question at all in anyone's mind exactly what they were getting and what they were being told they would get.

Now, Ms. Hynes mentioned this morning that Mr. Friend had executive positions. As I said, I do not know what she means by that. What I do know is that he held the position of general counsel and tried to do that job to the best of his ability and he had a lot.

endtake 3

He did have another role in the company, and that was in developing this property out at Rio Rancho.

This was, as you heard, a community now of some 7,000 people. It was growing all the time in the period 1973, building three to 400 houses a year, and it was necessary for some coordination or supervision from the New York office.

Mr. Friend took on that job and he worked very hard at it, and during that time homes were built, churches were built, as you heard, a shopping center was built, an office building was built, a golf course was built, an industrial park was there, and all of these things came under his supervision andcoordination.

Now, if that is another executive position, then Mr. Friend is glad to say he did that, because he was out trying to deliver, trying to fulfill what people who bought this property were going to get, and he was very successful, as you will see, when you get the pictures and the story of what they have out in this lovely community.

There is something wrong, it seems to me, when a man can be indicted, as Mr. Friend has, when his legal activities, as I think I have indicated the evidence will show, was directed to making sure that there was no misrepresentation and no fruad and his non-legal activities were directed to delivering to the purchasers of this land the things that they had been told they would get, a viable, substantial, growing, bustling community. And Mr. Friend, I think, deserves a substantial amount of credit for that part of his activity.

I do not understand and I cannot discover how the government can base a claim of fraud on that. What else, as far as we have everbody able to find out, can it be?

I told you in general terms what Mr. Friend had done and some of his activities. I would like to tell you just a few specific examples of documents that you are going to see in evidence which perhaps will help you follow and understand and support what I have tried to tell you in general terms.

Shortly after he came with the company, he asked that there be a meeting of the regional sales managers. He wanted to make sure that the salesmen understood what they were doing and they could cut down if there were any complaints coming in, and he said this, in a letter dated November 11, 1970.

He says, "Most of the complaints we receive from state agencies relate to statements allegedly made by salesmen and practices contrary, contrary to company policy, contrary to company policy. Some of these consumer complaints emanate more frequently from certain offices than other offices.

"In this business" -- this is Mr. Friend speaking now as a lawyer to his clients -- "In this business, it is my considered judgment that we must be more chaste than Caesar's wife and the above aspects of our operations must be tightened up."

Here is a man who has been charged with perpetrating a swindle, he sits here charged with that, a lawyer of 28 years, a professional man of the highest reputation and character, and the government has that document, they have had it since they got into this case, and yet here you are faced here today with a man saying just that.

He is telling these people that this is a public business, the public is involved and we have to cut square corners and cross all our T's and dot all our I's; we must be more chaste than Caesar's wife, he says. We must be very careful, we must be very conservative, we must be very cautious.

I suggest to you, and I don't need to suggest to you, I ask you, is that the conduct of a man who is trying to perpetuate a swindle? Is this the action of a man who is trying to steal money from people?

I think that question answers it.

Later Mr. Friend wrote a letter to one of his lawyers, October 19, 1971, with reference to the manual of office procedure, and he said in this letter:

"I would like for you to review the manual carefully to see whether there is anything in the manual which might involve us in a crime of misleading sales and advertising methods."

He said he became concerned about it because of another company's problems and he said specifically, "Watch for instructions concerning promises of resale" -- this is the resale you heard about this morning -- "and return on investment." The government told you that this alleged scheme was to get a quick return on investment.

Mr. Friend is telling one of his staff members to check and make sure there isn't anything like that in the office procedures; again, not the act of a dedicated swindler, rather, the act of a man, just like the rest of us lawyers here, trying to advise his client properly, trying to do what is right and being conservative and cautious in his work.

Now, you heard this morning, too, from Ms. Hynes about how in certain of the literature there were price references to the sales of other property.

You were not told what was in the rest of the document, and this was put in by Mr. Friend. You may recall that Ms. Hynes referred to examples of other sales.

But Mr. Friend had in this document, "These are strictly factual records," referring to the examples, "and do not in any way represent or imply a promise or prediction of future land values or prices which, of course, depend on location, rate of development, marketability, population growth, plus other factors."

Again, that is the act of a conservative, cautious, honest individual who is trying to make sure there is no question in anybody's mind but when you see an example you don't -- you understand it is just an example and that Rio Rancho land may or may not be different. It is a warning and it is a warning written by this man who is charged here with trying to perpetuate a fraud on the public.

There are many more, but I won't take the time today to do it, to go over them with you, but you will see them as this case develops.

Mr. Friend also concentrated his efforts, where necessary, in trying to handle whatever complaints came in.

As I told you, with 400 salesmen there were from time to time, it would naturally be in any business, complaints about purchases, disgruntled and otherwise, and he tried to set up, as I told you, this complaint department to try to take care of that to find out if any particular salesmen were causing any problems and to localize and take appropriate action.

I mentioned to you earlier in the same connection this message about being more chaste than Caesar's wife, and that was his attitude. And this comes through from the written record. But the evidence will show, and we will not really on the written record alone, we will also have testimony from the people who worked with Mr. Friend, some of the company officials who will tell you of his efforts and his successful efforts, I think, to guide this company to make sure it was staying well within the law, that obeyed all the regulations that the company was subject to.

You will have testimony from some of the younger attorneys who worked for him, how they were aided and guided and supervised by him and how they were always instructed be careful, be cautious and be conservative.

You will hear, too, from others who will testify, other lawyers who he hired around the country.

And this is interesting, too, that here Mr. Friend is charged with a conspiracy along with all these others, and yet he is engaging a number of lawyers throughout the country in helping him assist him doing his work to keep this company in the path of what was right and what was legal, and these lawyers, too, will tell you of his efforts, of his conservative efforts as to what the law was and how he pulled these things together to try to keep well within the law.

Finally, of course, you will hear people who will come in who will speak to Mr. Friend's character. And I think you will be impressed with the people who will come in and tell you about Mr. Friend's reputation in the community, his reputation for integrity, for honesty and for truth.

You will hear from these people and I am sure that they will have an impact on your judgment and your evaluation whether this type of man could be engaged in the kind of a swindle that the government says he was involved in here.

You may ask after this, why is Mr. Friend a defendant?

I really don't know. I couldn't answer the question, under oath or otherwise. I have tired to find out --

MS. HYNES: Your Honor.

THE COURT: Mr. Glendon, that is not opening.

MR. GLENDON: All right, sir.

I have no explanation for that.

But I will ask you to consider the evidence, consider it very carefully, and I think that when you do you will find that Mr. Friend has advised his clients in this matter and throughout his career properly, he has been conservative and his advice has been received and accepted by his clients and that he has done everything in his power and he is not guilty of the charge that is presented here to you today.

Thank you.

THE COURT: We will have a short recess.

(Recess.)

pm

EOjw 1

(In open court - jury present)

THE COURT: You may proceed.

MR. FLEMING: May it please the Court, member of the jury:

Can you stand one more lawyer? My name is Fleming. I represent Dan Friedman, who is forty-one years old and was born on April 12th, and Chester Carity who is fifty-one years old and was born on April 12th ten years apart.

The evidence will show that Chester Carity was with this company in 1961 when the land in New Mexico was purchased, and that Dan Friedman joined the company in 1963, two years after that purchase.

This is John Sprizzo, he is my partner and my friend. He is going to assist in this representation.

A young fellow named Elliot Lauer and had to leave early today is a lawyer and will assist in this representation.

I think it is appropriate to say that there may be days when I won't be here or Mr. Sprizzo won't be here or Mr. Lauer won't be here, but please understand it is a long trial.

Now, this is a federal criminal case, a federal felony criminal case. You were sworn and you took

eojw 2

your oaths to do at least two things: The first was to presume that anyone in this courtroom charged with a crime, just as you would want that presumption if you were charged with a crime, is innocent of that crime, and you took that oath.

You took an oath also that you would hold that presumption of innocence unless the prosecutors, not by what they say but by the evidence they introduce which you believe, convinces you that anyone in this courtroom is guilty beyond a reasonable doubt. You took that oath, we took your oath and you are our jury.

These men are on trial. Their lives are on trial. Their work is on trial in a very real sense. The prosecutors have chosen to bring them to trial. These men are entitled to those rights and they are entitled to your oath, which they have received.

Now this case is entitled United States of America against AMREP, Dan Friedman, Chester Carity and others. It has been said that if our government were as good as our people, we would have quite a government and that is why we have you here on your oath to listen to their evidence to decide if it is truthful, decide if it is meaningful, decide if it convinces you that, in fact, these men are guilty of a crime.

eojw 3

The essence of it is whatever this indictment is entitled, it is only a charge and that you, this jury, are, in fact, the United States of America and that is the funny kind of country we have.

THE COURT: Mr. Fleming, get down to an opening, please.

MR. FLEMING: I will, your Honor.

Now, Ms. Hynes said certain things in her opening. They were just her opening. I want you to remember what she said. I want you to hold her to it.

You may have had a vision of wasteland with pieces of cloth floating across it and an old tent when you left for lunch. She said, for example, if you recall, that 55,000 acres of this land were purchased in 1961 and then in 1969 or between 1969 and 1971 an additional 31,000 acres were purchased. She said to you that the land was purchased in 1961 at a price of $178 an acre and she said that the additional land, which she described as the back part of the property, was purchased some nine years later for $180 an acre. That is only $2 an acre more. You may find on the evidence that's correct.

Then she said, so where was the increase and appreciation? You may find when you hear the evidence that we will establish that Ms. Hynes left something out.

That has to do with what you have heard referred to as an exchange rate. There is some complication in this case but I think if you understand this case it is a very simple case. The exchange rate.

Ms. Hynes talked, if my recollection is correct and yours controls, but the company taking all the money it was paid for the land by people who purchased the land and putting that money into the company's property and not into the property of the people who had paid for the land. Then she talked very briefly about an exchange rate. I asked if we could use this blackboard for just a moment.

We believe the evidence will show the following about that.

I will just draw a circle and put a "CL" in there and you may find that is what she referred to as the company land and that money paid by X purchaser for a half acre out here was, in fact, invested in this company land. But if you had the impression that the company owned all that land and put the money only into what they owned, you may find, as you hear the evidence, that you had a misimpression because the person who bought this half acre of land (indicating) when he or she or they bought that half acre of land bought with it what was called and is called an exchange rate.

You will come to understand that more clearly than I could explain it here. When you do understand it you will see how simple it is. It meant a very simple thing. As a matter of contract, as a right which this corporation and these defendants never breached, as a promise they kept, that the company would put money into utilities and water and community developments and a golf course and a sewage system and all of the things Mr. Arkin talked about in this fly-by-night scheme to sell land fraudulently and when the owner of this half acre, whom you may find might have been forty when they purchased it, decided they were going to retire and go out and live in New Mexico for reasons which may become apparent when you hear the evidence, when they decided they would go out and live there, they had an absolute contractual right that if the development had not reached their half acre when they made that decision, whenever that decision was made, they could exchange that half acre for a building lot here (indicating).

So you may find this was not the company's land. It was the land upon which the purchaser of this half acre had a right the moment he wanted to build a house and live in New Mexico.

eojw 6

I hope you understood that this morning. Ms. Hynes talked this morning about these purchasers to my recollection buying these lots as an investment in reliance upon false representations as to the value of the lots.

Now,we will hear people who bought land, we will hear why they say they bought the land, reliance upon representations as to the value of the lot.

Ms. Hynes talked about psychological pressure. You may recall she talked about salesmen beginning to write a contract before a person decided to buy a lot and sign that contract.

We will show you that more than nine out of ten of the people who went to these sales dinners where they presumably, according to Ms. Hynes, were exposed to these overwhelming psychological pressures, nine out of ten didn't buy any land. Nine out of ten for whom salesmen were supposedly writing otu contracts before they said they would buy land, in an environment where salesmen were saying, hold, hold, hold, in this big swindle, had their dinner, looked at the movies, listened to what the salesmen had to say and went home. A brainwash case.

Ms. Hynes said they could only cancel by going to visit the property. Since 1969 they have been able to cancel without doing anything except calling up and saying, I don't want it, whether they woke up the next morning after the brainwash, within forty-eight hours.

Ms. Hynes said that sales managers called purchasers the next day after the dinner and asked if they wanted the land. The government says that was more hype, more sell. You may find that a purchaser woke up the next morning and if they had, in fact, been brainwashed in the comfort of their own home could have said, I have changed my mind, you know I don't want the land.

The visitation right. Mr. Arkin has said it. Would you like it if you would go to the A&P and eat potatoes before you bought them?

They had six months, any purchaser had six months to go out and look at the property, their property, their "piece of raw desert", to look at Rio Rancho, to look at Albuquerque, to stand in the vista.

You will hear evidence they were not in chains, they were in downtown Albuquerque, they were free to walk into a real estate office and say, "What do you think of the real estate investment?"

Talking about good faith and in measuring good faith, do you know of any company that says, come out and look at it, if you don't like it you don't have to have it and you have got six months to come, a company that does that and is that strongly convinced of the worth of what they are selling.

Mr. Arkin said a capital investment of millions of dollars for the development of this property, the management of this property. They built a golf course. The government says the golf course is a come-on, an inducement.

The proof will be that they went out and they got Gene Sarazen, one of the greatest golfers in history, and a golf designer named Muirfield to design this golf course and that they built it and it cost over a million and a half dollars. It is one of the finest golf courses in the southwest of the United States.

They donated land for churches, they donated land for industrial development. That will be the proof that is this fly-by-night operation.

They created a thousand jobs. They purchased water rights. Millions of dollars spent because you may find on the evidence that we will present that what these men wanted to do, having bought the land, was to sell it and to develop it and then to manage it. Very simple.

This indictment is very specific. It charges, and that is what we are involved with here is the charge in this indictment, it charges that these men were land fraud artists. They were engaged in the fraudulent sale of land, land fraud artists.

When this case is over you are going to have to put it up against all the evidence you have heard and make your determination.

This is a swindle which we will establish had a $20 million line of credit from the Chemical Bank in New York.

This is a swindle which we will establish presently has a line of credit up to $50 million from the General Electric Credit Corporation, a subsidiary of General Electric Corporation.

This is a swindle which we will establish had as their investment banker, their corporate investment banker, the people they would go to for financial advise, Lehman Brothers down on Wall Street, one of the oldest and most prestigous, the evidence will establish, investment banking firms in the word.

This is a swindle which had a partner of Lehman Brothers as a director. This is a swindle which had a senior vice-president of the Chemical National BAnk here in New York as a director

Which had as a director a former ambassador from the United States to Canada.

This is that wasteland that was described this morning with the old tent and the cloth being across the desert as the movie set in the end.

As Mr. Arkin said, Rio Rancho is where the Motherhood of Felician Sisters decided to invest over a million dollars to build their home.

Where in 1961 there was a single lane unpaved road past the property, where today there is a four lane paved artery, main artery running directly into Albuquerque.

Where in 1961 there were no high schools and in 1966 a high school was built projected to last for ten years and by 1972 they had to build another high school just two miles from this property, which is now one of the biggest high schools, if not the biggest, in New Mexico.

Lovelace Medical Center, which you will hear is the equivalent of the great medical centers of the United States, has opened a clinic on the property of Rio Rancho.

In this mail fraud case the United States Post Office Department has not only given Rio Rancho a zip code, but they have opened up a post office.

You might believe that if these fellows were land fraud crooks engaged in the sale of land for money in a fraudulent way that that is all they would be concerned with. Buy it, sell it, run.

The contract which these supposedly mesmerized, brainwashed, psychologically pressured human beings signed said in print that payments were on the installment basis over a period of years before title vested.

The contract said that if someone failed to make a payment -- if someone failed to make a payment within sixty days after the failure to make that payment the company, AMREP, had an absolute right to take the property back and to keep the money that was already paid.

You have a-l seen those contracts. An absolute enforceable contractual right, the purchaser had the contract. They say they didn't read it. If we had read it to them, they would be saying they didn't listen.

Not once in fifteen years has AMREP Corporation ever foreclosed on that contractual right and if you are in land fraud business, if you are selling land for profit and that is all you are concerned with, and somebody goes into default, the banks do it, why don't you grab the land, keep the money and sell the land again. We will prove that.

Legitimate hardship cases -- these men are businessmen -- someone writes in a letter and says, I am sick, I cannot pay. They don't accept that letter. They ask for a doctor's certificate, they ask for some evidence. Fair enough I say, but when they determine that the hardship was legitimate, that the wage earner was in difficulty for whatever reason, they had a right to foreclose, keep the money and sell the land again and they didn't. They worked out extensions of payments, discounts of payments. They wanted the people to keep the property.

Now they say they were land fraud artists and I say you may find from our evidence, which we will prove, that they were people that were interested in coming there and developing that land not as saints and not as missionaries, although you may find that was a part of it, but because that was in their best economic interest.

One little story which we will prove. Their contract provided that in a situation where fifty percent or more of the purchase price of the land had been paid over this installment period, fifty percent or more paid, and the breadwinner, it used to be the husband, the breadwinner died, the surviving spouse owned that land with no further obligation to pay. These swindlers, that was in their contract.

Now, the State of New Mexico came along, the governments came along and they said, you can't do that, that puts you in the insurance business. You cannot give them that benefit. That puts you in the insurance business.

That didn't stop these people, these land fraud artists, they formed their own insurance company and they gave the purchaser an insurance policy. They had to comply with all the laws and all the regulations and print all the forms and spend all this money to do it and we will prove it.

So that if you were under sixty years old and you made a ten percent down payment on your property and the breadwinner died the next day, the property went to the surviving spouse with no further payment.

If you were over sixty, and I think this is fair, the down payment had to be fifteen percent, but if you made the fifteen percent down payment and the breadwinner died the next day, the property belonged to the wife or the husband, whoever was the surviving spouse, and not the breadwinner.

So even when the State of New Mexico said, you cannot be kind to your homeowners, they went out and they did it anyway. These people whom they say were engaged in the fraudulent sale of land.

You ask yourselves as you hear the evidence if that is the conduct of people who are merchandising land or if it is the conduct of people whom we say had a dream and a vision and an economic interest in developing this property and then servicing it.

If engaged in land fraud you might wonder why they would encourage anyone to come and live there. You have already heard what Mr. Arkin has said about the people that are living there and about the community that exists there and about how it is growing.

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This company invested more than $6 million in building condominiums of its own money, building condominiums.

The government may say that was to lure more people out. It is Alice in Wonderland, you may find.

$6 million in building condominiums. And if you were a homesite owner out here and you had this piece of raw dessert and you decided you wanted to, finally it was time and you wanted to come out and live in New Mexico, your contract did not give you the right to have one of those condominiums, but they let you, and so you could exchange this not for a lot upon which you could build a house in here, the utilities and the water, but you could exchange it against the purchase price of the condominium.

And you will have to ask yourselves whether that is the conduct of people who are engaged in selling land for fraud, fraudulent gain, or is it conduct of a corporation and a group of men who are trying to develop a community and encourage men and women and families to come here and live in the sun.

This company, for a period of time, you will hear from the evidence, when money was tight, provided from its own funds, at interest but at reasonable interest, mortgage money for people who wanted to buy houses on the property, construction money for people who wanted to build houses on the property.

Is that the act of someone who is just trying to sell land, or is it the act of someone who is trying to develop a community?

This company developed banking relations up in New Mexico to make available to homesite owners who wanted to build or buy and live, had reached that point they wanted to exchange their piece of land which they had bought which they had the right to exchange into this developed area or build a house or buy a house that was there already and live there, they arranged with the banks in Albuquerque to lend money between 80 or 90 per cent of the cost of the construction or the mortgage money.

And when there came a time, as we may all remember, when money was so tight when it was hard for banks to lend money, this company, which was engaged in this scheme to defraud on land, paid the banks in Albuquerque a commitment fee in order to guarantee that the banks would hold funds to provide people who wanted to exchange in and live with mortgage money or construction loans.

Those are facts.

They had a program to encourage people who had bought property out here but were still living in the New York area, for example, or some place where it is colder, "Why don't you come on out and see if you want to build a home, exchange your lot in the exchange area and build a home or buy a home out here? Has that time come for you yet?"

The person would put down an amount as much as $250 as a binder that would secure the price of a home they could build, they could then come out, they would have to pay their way out, they would have to fly out, they would have to make the decision, seeing the property again, as to whether they wanted to move.

If they decided that they did, that they wanted to move in and have a home in Rio Rancho, then AMREP paid them back for the cost of their trip out there.

If they decided, having come out there at their own expense, that they didn't want to build there, then AMREP gave them back their down payment.

Is that the act of a company which is swindling people in land, or is that the act of a company which, we submit to you on the evidence which we will prove -- and we think mahy of their witnesses will prove when we cross examine them -- of a company and a goup of men who had a dream, both economic and we think psychological, of building on this property and developing it and encouraging people to come there and live?

Now, they promised evidence of all these false statements by salesmen, these salesmen running down and making these representations. None of us were there. Let's wait and see. Let's hear what the salesmen have to say.

We only ask one thing:

There are two parts of testimony. The first is when they say what the prosecution questions them, and the second is what they say or may have to say when we question them.

You listen to the cross examination of these salesmen. You ask yourselves one question as you listen:

Did these salesmen in fact, or some of them, go too far in what they said to potential home owners, homesite owners, land owenrs, did they go too far in their urge for commissions?

And if they did, have they gone too far now for their own benefit, again, since they are not defendants in this case, have they gone too far in accusing others of having told them to say so?

Ask yourselves that question.

The victims, the supposed deceived and defrauded people, they will come in, they will testify. Let us listen. Let us hear what their complaints are. Let us hear how they say they were deceived. Let us see when they first complained.

We know this much, we know they had a property report before they signed a contract and it said everything. It told them exactly what they were getting, and the government will not prove a broken promise in this case.

They had that. They had 48 hours after they signed a contract to call up and say they didn't want to go through with it.

Often people from AMREP or Rio Rancho were in touch with them during the 48 hours -- the prosecution says to drive the sale home; you may find when you are on the telephone with someone, after escaping those terrible psychological pressures, that nine out of ten escaped the night before, you might say, "I changed my mind."

But most of all, the cancellation rate.

Let me read one part of this document to you and then I am finished after a few more words. I am sure that relieves you.

To show you how upsidedown this case is, talking about this six-month cancellation privilege, you sign the contract, if you go out and look at the property and you don't want it for whatever reason -- because you got a headache -- you just cancel; an absolute totally contractual right by these crooks. And they say or they charge that was fraud; to give them that right was fraud because you couldn't cancel unless you went, so it was a fraud to make them come to the property.

In the very same paragraph they said it was a fraud because when they got them to the property they sold them more land.

You may find that that's upsidedown.

It's a fraud because if you don't go out there you can't cancel and it's a fraud because if you do go out there you can cancel but you might buy more property.

It is quicksilver.

Yes, in order to cancel after 48 hours -- before 48 hours you just cancel -- in order to cancel after 48 hours you have to visit the property. And you may find that is a little different demand by people who are in business. And, yes, you did have to pay your way out.

But you will hear the evidence that charter flights were arranged, that room and board was paid for by AMREP, that people were out there three or four days, that they weren't in chains, that they saw the very piece of property they had purchased, that they saw the developed property, that they saw Albuquerque, that they saw everything. They cut the potato wide open and looked at the inside.

And you will hear evidence that AMREP lost money in subdividing those trips and giving those people a chance to get down there and cancel within six months.

The prosecutor held up this big poster -- and I am not big enough to open it up myself -- but you may recall it was a big chart of land.

The prosecutor said this morning that these people, these supposed victims, bought these lots as an investment in reliance upon false representations.

More than 50 per cent of the people who bought these lots went out to that property, they stood on that property, they saw it. They could pick it up and they could feel it. They could look left, they could look right, they could look up, they could look down, they could look and see where Rio Rancho was, how far it was from them, they could see where Albuquerque was and they could see what was between Albuquerque and Rio Rancho. And they had an absolute right to cancel, and only 10 per cent did.

THE COURT: You are past your time.

MR. FLEMING: I am past my endurance, too, your Honor. I am finished.

Keep those things in mind.

This is a very long case, or this purports to be a very long case, but it is a very simple charge.

I am talking about Chester Carity, but I suppose I am talking about the other defendants, too, Chester and Dan.

In 1961, when these men went out and bought that land -- Chester Carity was with the company at that time, Dan Friedman came in in 1963 -- did they buy that land with the intention of dealing it off as a swindle?

Think of all the facts that you will hear in this case. They have made their promise, we have made ours. We have complete trust in your oaths, and I really thank you for listening this late in the afternoon.

Thank you.

THE COURT: Ladies and gentlemen of the jury, that completes the opening statements.

Monday morning at 10:00 we will start with the evidence.

We will continue in this courtroom Monday morning, so be in the jury assembly room in the back by 10:00 because we will start on time.

Have a good weekend.

(Pause.)

THE COURT: Pardon me, I forgot.

I again want to make the same statement I made to you yesterday, and that is that you are not to talk about this case with anyone over the weekend or at any time from now on.

It may be -- and I don't know whether it will occur or not -- that there may be some newspaper articles about the general subject we are considering or even about this specific trial.

If by any chance such articles do appear, please skip them and don't let anybody talk to you about them.

(The jury left the courtroom.)

THE COURT: Mr. Fleming, do you wish to put on the record your motion?

MR. FLEMING: Yes.

After Ms. Hynes' opening this morning, at the luncheon recess, I did move for a mis-trial based upon the inflammatory nature of her opening.

THE COURT: The motion is denied.

MR. FLEMING: And I asked your Honor to instruct the jury that an opening was no more than a statement by a lawyer and did not constitute evidence.

THE COURT: I think the jury is entirely aware of that, and I said to you, as I recall it, that if you wish you can bring that to the jury's attention.

MR. FLEMING That's right. I want to add that, that you said I could bring it to the jury's attention at that time.

MR. RUBINO: If your Honor please, I asked for a directed verdict of acquittal on behalf of my defendant on the basis of the opening of the prosecution.

THE COURT: The motion is denied.

MR. ARKIN: Your Honor, may I ask a question?

THE COURT: Yes.

MR. ARKIN: Is the first order of business on Monday the unfinished business of this morning?

THE COURT: Let's do it now. I have another matter at 4:30, but maybe we can finish it up.

I think we are on the question of reading from Mr. Friend's grand jury testimony.

I understand that to be the unfinished business of this morning.

MS. HYNES: Your Honor, I would like to make an application on behalf of the government that your Honor consider that testimony prior to the time that the government is going to offer it, which will be substantially into the trial after evidence has been taken and documents have been introduced which will lay a foundation for the testimony that we would seek to read in and your Honor would be in a better position to rule on it at that time.

We will represent to your Honor that we will give you sufficient notice, whatever number of days your Honor wants, ahead of time that the government will offer it.

THE COURT: I think that is a fair request to make at this time.

Give me four days' notice.

MS. HYNES: We will, your Honor. Thank you.

THE COURT: All right.

(Adjournment taken to Monday, November 8, 1976, at 10:00 a.m.)

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UNITED STATES OF AMERICA

V. 76 Cr. 644

AMREP CORPORATION, et al.

November 8, 1976
10:00 a.m.

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(In open court; jury present.)

THE COURT: Good morning.

Call your first witness.

MR. KAUFMAN: The government calls Berit Hampe.

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BERIT HAMPE, called as a witness by the government, after being first duly sworn, testified as follows:

THE CLERK: Is that Miss or Mrs.?

THE WITNESS: Mrs.

MR. KAUFMAN: May I proceed, your Honor?

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DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mrs. Hampe, if you will, try to keep your voice up so that those of us in the back here can hear you. If you would like, you can take your coat off at any time while you are here.

Mrs. Hampe, where do you live?

A In Connecticut, in Middlefield, Connecticut, Route 147.

Q How long have you lived in Middlefield, Connecticut?

A I would say about eight years.

Q How old are you?

A 42.

Q Do you have a family?

A Yes.

Q Husband and children?

A Yes.

Q How many children?

A Three.

Q Is your husband employed?

A Yes.

Q What job does he have?

A Machinist.

Q Are you employed?

A No, not now.

Q Do you own any land at Rio Rancho Estates?

A Yes, we do.

Q How much land do you own there?

A About two acres. Four building lots.

Q Four building lots?

A Yes.

Q That is approximately a half acre each lot?

A Right.

Q Do you recall about when it was that you first heard about Rio Rancho Estates?

A In about 1968.

MR. GLENDON: Your Honor, excuse me.

THE COURT: Yes.

MR. GLENDON: This would seem to raise the question of dates and I would ask for the instruction as indicated.

THE COURT: It is too early yet to make that ruling.

MR. FLEMING: Your Honor I take it we have a connection objection.

THE COURT: Certainly.

Q How did you first hear about Rio Rancho Estates?

A We got the invitation through the mail to go to dinner at the local restaurant close by.

Q Do you remember where that restaurant was?

A Well, it was in a town called Portland, Connecticut.

Q Try as best you can to talk a little louder, okay?

A Okay, right.

Q Did you go to that dinner?

A Yes, we did.

Q Who did you go with?

A My husband.

Q Did you go to any other Rio Rancho dinners after that?

A Yes, we did.

Q About how many?

A Three or four maybe after that.

Q Where were those additional dinners in relation to the first?

A Well, it was about a year or two years later.

Q So would I be correct in saying about 1969 or '70?

A Right.

Q How did the dinners compare to each other in terms of format and substance of what went on?

MR. FLEMING: I object to the form of that question.

A It was all the same.

THE COURT: I think you can make it more direct.

Q Were the dinners different --

THE COURT: I think you had better ask what happened at the first one and the second one. Otherwise we don't know which was different from what.

MR. KAUFMAN: I am trying to shorten the procedure.

THE COURT: You can't because obviously the defendants want to know exactly what this woman's experience was and what time she had those experiences.

MR. KAUFMAN: All right, your Honor.

Q Directing your attention to the first dinner, Mrs. Hampe, do you recall about how many people were in attendance at that dinner?

A 40, 45, 50.

Q How many people were seated at the table that you were at?

A There was six and a salesman or land consultant, what he called himself.

Q Is that what the salesmen were called?

A Yes, they didn't call them salesmen. They called them land consultants.

Q Were these salesmen --

THE COURT: She said land consultant. You are calling tjem salesmen. She called them land consultants and you are not testifying here, Mr. Kaufman.

Q What did the phrase land consultant mean to you when the "sales people" were introduced to you --

THE COURT: Forget the quote, unquote sales people. I made my ruling very clear.

She said she sat at a table with six people including a land consultant.

Q What did the phrase land consultant mean to you, Mrs. Hampe?

A Land consultant to me means they are experienced in land, more than a salesman would be. They know about real estate and had schooling in this type of thing.

MR. FLEMING: I move to strike the last part unless she were told that, if your Honor please.

THE COURT: Sustained.

THE WITNESS: That's just my opinion.

THE COURT: I know, but we are trying to find out what these people told you they were. They said they were land consultants?

THE WITNESS: Right.

THE COURT: The rest you are dreaming up in your mind.

THE WITNESS: Yes.

THE COURT: They didn't tell you that, did they?

THE WITNESS: They only told me they were land consultants.

THE COURT: That's all you can tell the jury. They told you they were land consultants.

Q Mrs. Hampe, can you tell us to the best of your recollection whatoccurred at the dinner?

A We got seated. There was a brief introduction. We had the dinner. Then they showed two films, at least two films.

Q Do you recall the names of either of the films?

A West Side Story, the Golden Future.

Q When you say there was a short introduction, who made that introduction?

A That was like one head person and he was doing the introduction.

Q Did this head person make any other speeches beside the short introduction?

A Well, after the film he was talking about all the investment and things like that.

THE COURT: Tell us exactly what he said. That is what we are really trying to find out.

You were seated there at this first dinner and you saw two movies, West Side Story and Golden Future.

THE WITNESS: Right.

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THE COURT: What did anybody tell you when the films were over or before them, Mr. Kaufman.

Q Mrs. Hampe --

THE COURT: Ask the witness questions which will bring out what occurred while she was sitting there. That's what the jury wants to hear.

(Continued on next page.)

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Q Was there one speech or more than one speech at the dinner?

A There was one speech in the beginning and then after the films were shown there was another short brief speech.

Q Can you remember in your own mind what was said at each speech or is your memory basically what was said in the dinner in total?

MR. FLEMING: Objection.

THE COURT: Sustained. Ask the question and let her tell you what she remembers. Don't put words into the witness' mouth, please, Mr. Kaufman.

Q Can you remember what was said during each speech, Mrs. Hampe?

A You know, first the films were shown, most of the things. There was a brief introduction about Albuquerque, how nice this was and what they had in the City of Albuquerque.

After the film had been shown it looked very nice, everything, and then they start talking about the investment.

Q What did they say about investment?

A Well, the City of Albuquerque, according to them, was only able to grow in one direction and that was through Rio Rancho.

Q To Rio Rancho?

A Yes, towards Rio Rancho.

Q Do you recall what reasons were given why Albuquerque could only grow in that direction?

A There was government land on one side. There was a river on another side and mountains on one side. So the only way they could grow was through Rio Rancho.

Q I show you what has been marked Government Exhibit 167-G for identification.

Do you recognize that?

A Yes. We got this in the mail.

Q Have you provided that to the government?

A Yes, we have.

Q Can you tell us what this is?

A Well, it's a booklet about land, all about land.

Q Where did you receive this booklet?

A Through the mail.

Q From who?

A From Rio Rancho Estates.

Q Do you recall whether or not this booklet was used at the dinner party?

A Yes, this in particular was used when they introduced one movie.

MR. KAUFMAN: The government offers 167-G, your Honor.

THE WITNESS: That is the particular view.

THE COURT: Only answer questions when he asks you, okay?

THE WITNESS: Okay. I am new at this.

MR. ARKIN: No objection, your Honor.

MR. GLENDON: Your Honor, I object to this exhibit on the grounds in the date. This had to be used prior to 1970.

THE WITNESS: We bought our land in '68.

MR. GLENDON: I believe we discussed this at the pretrials.

THE COURT. I will allow this exhibit in against all the defendants except Mr. Friend.

During the course of this trial, ladies and gentlemen, there will be a lot of evidence that comes in against certain of the defendants but not against the rest of the defendants and I am going to have to tell you now, and as we recapitulate from time to time, the evidence that comes in against a defendant which is binding on that defendant but does not come in against another defendant.

It cannot be considered by you in determining the guilt or innocence of the other defendant.

MR. RUBINO: Can we have a date fixed for the receipt of this brochure?

THE COURT: She said 1968. That is what she said.

You received this brochure in '68?

THE WITNESS: Yes, shortly after we bought our land.

THE COURT: You bought the land in 1968?

THE WITNESS: Yes. We received so many of these things.

(Government Exhibit 167-G received in evidence)

THE COURT: They are entitled to know from you when you received this specific booklet and if you can't remember, say so.

Q I direct your attention to pages 8 and 9 and ask you if you remember that from the brochure at the dinner?

A Yes, they had a big map they were rolling out and it showed specifically where the government land was, the river was and so the only place Rio Rancho was able to grown.

MR. GLENDON: Your Honor, the witness has testified now, as I believe that she bought the land in 1968. I renew my objection and ask the Court to make an instruction.

THE COURT: I have already made the instruction.

MR. GLENDON: On her testimony.

THE COURT: I have made the instruction.

MR. GLENDON: The testimony and the exhibit is not being received?

THE COURT: As of now.

MR. KAUFMAN: I would like to read from the pages identified by Mrs. Hampe.

THE COURT: Yes.

MR. KAUFMAN: These are pages 8 and 9 of the booklet "This is my Land". It is entitled "Albuquerque's Future Growth, a Predestined Pattern."

(At this point Mr. Kaufman read from page 8 of Government Exhibit 167-G in evidence to the jury)

MR. KAUFMAN: On page 9 is a listing of different real estate transactions and the map in the center of the page has a pink section in the middle labeled Albuquerque with the green section depicting federal and reserve lands, the purple section, federal and reserve lands, the orange section at the top Rio Rancho Estates and the arrow coming out of Albuquerque to Rio Rancho Estates labeled growth.

Q Mrs. Hampe, do you recall anything else that the speaker said in terms of investment?

A Well, if you had -- he pointed out that land was the best investment. If you had invested so much in stock, five or ten years ago, that would go up that much and if you were to put in a bank account it would have gone up that much and if you were to invest it in land, well, it was way up. They showed a chart on that at the dinners.

Q A chart?

A Yes, like a map, a large map.

Q Was anything said at the dinner concerning the history of prices at Rio Rancho?

A Yes, at the dinner, at the table, with every setting was a sheet or paper and the lots for sale and it said the price, the current price, and what or how much it had gone up from the last five years.

Q At the end of the last speech do you recall what happened?

A At the dinner?

Q Yes, at the dinner.

A No, I don't know what you mean.

Yes, when they were finished with the speech the sales or the land consultants were all standing up. They were saying hold this for so and so and my husband and me we thought it was very funny that the land was selling at that high a rate without people even thinking it over.

But we got the expression it was really going really fast.

Q Did you buy land that night?

A Yes, we did.

Q How much land did you buy?

A One acre.

THE COURT: This is in 1968?

THE WITNESS: Right.

Q Mrs. Hampe, I show you three pages that have been marked Government Exhibit 167-E for identification.

I ask you if you can recognize those pages?

A Yes, they were used at the dinners.

Q Can you look at all three just to make sure you recognize them?

A Yes, that is what was laying at the tables.

Q Can you tell us what these sheets of paper are?

A Well, it is the size of the lot and the building lot and the unit, what the lots is in and the street locations.

Q Were these the lots available for sale at the particular dinner party ?

A Yes, and then they had a special of the day like.

Q Tell us about the special of the day?

THE COURT: First of all, were all three of those on the table at the first dinner?

THE WITNESS: I cannot recall if all three were there.

THE COURT: Can you tell which one was?

THE WITNESS: No, not really which one it was but one of them was. It is hard for me to separate them here, which one was the first one. You went to three dinners. They all had them at the dinners. Every dinner we went to was similar. They all had the same procedures.

THE COURT: But you can't tell of those papers you have in your hands were ones that you saw at any of the three dinners, can you?

Q Did you produce these three documents and turn them over to the government?

A Yes, this is what I had from my dinners myself.

THE COURT: That is all we are trying to find out to make sure those are the ones.

THE WITNESS: These are the ones I had supplied myself.

MR. KAUFMAN: The government offers 167-F, your Honor.

THE COURT: Any objection?

THE WITNESS: I know because of the coffee stains.

MR. FLEMING: There is an objection.

THE COURT: I thought these were passed upon. That is at the pretrials?

MR. FLEMING: I cannot recall.

MR. ARKIN: They were not, your Honor.

THE COURT: The jury is excused.

(Jury left the courtroom)

THE COURT: I thought all these had been passed upon or agreed to. There is no point in doing one at a time. Let's get a whole batch at a time.

I gather these go to the count customers. What is your objection to this one, Mr. Fleming?

MR. FLEMING: Your Honor, the objection is generally they are printed by a L.J. Lee Associates, Hartford, Connecticut, an independent broker, to my understanding, and there is no connection with either the corporations or with the individuals in this case.

I particularly object to the last paragraph or the last column on the second one of these sheets.

THE COURT: Which says what?

MR. FLEMING: It says "Projection Val. in five years." There is no showing of authorization.

THE COURT: She said she was invited to a dinner at which Rio Rancho land was sold and this is what she was given.

MR. FLEMING: I understand that.

THE COURT: I will let it in.

MR. FLEMING: There is a question of authorization and connection with both the corporation and the individuals.

THE COURT: You can take that up on cross examination if you wish but as far as I am concerned if a woman is invited to a dinner to sell Rio Rancho Estates she receives brochures, I gather put out by Rio Rancho.

That was Exhibit 167-G and she received this at the table where the picture is being made. That is coming in against the defendants from where I stand now.

MR. FLEMING: Our objection is one of connection and authorization as to which there is no evidence with regard to this independent realtor.

THE COURT: If there is not we will strike it but there is no basis for objecting now. Where are the rest of them? Let's get them through at once. I am not going to have a conference every two minutes. What have you people done with those exhibits that call the documents relating to count customers 101 to 170? You were supposed to sit down one day and work them out.

Mr. Arkin?

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MR. ARKIN: If your Honor please, I don't know whether they were worked out or not. Ms. Dacey has more knowledge. Do you know, Ms. Dacey?

Stand up.

MS. DACEY: No, we have not.

THE COURT: I directed you to do it two weeks ago. We will just sit here and do it. It is ridiculous. I expect more competence from attorneys especially when they are directed by the court to do it, and if you can't work it out, we will do it especially when I have a jury here. We will spend hours and days on this.

MR. ARKIN: I agree with your Honor.

THE COURT: Let's start.

(Government's Exhibit 167-A marked for identification.)

MR. KAUFMAN: Your Honor, may I suggest that all counsel review the files of the two-count victims planned to be called today and then we can review the large number of remaining files while the court is not in session.

THE COURT: Did you tell them the exhibits that you were offering through those two-count witnesses today?

MR. KAUFMAN: They are filed separately, your Honor. I can just turn them over to them.

THE COURT: Do that.

MR. KAUFMAN: I believe it has all been shown, but we will do it again.

(Pause.)

THE COURT: In Mr. Arkin's brief there is only one exhibit objected to, 159-E. I was under the impression that anything you had on here was worked out and anything you didn't indicate you didn't object to.

MR. ARKIN: Your Honor, the brief on those particular objections were meant to be by way of example because of the large volume of exhibits. At the end of the brief we have an appendix which I believe makes specific objections as much as we were able to pre-trial.

My friend Ms. Thompson reminds me that the brief did not deal with the documents relating to the count victims. I can very quickly go through the particular documents in this file right now, your Honor. Most of them we have no objection to except for certain handwriting upon them.

May I do that?

THE COURT: Yes.

MR. ARKIN: With respect to 168-H, assuming there is no handwriting on the document and there is none, we have no objection to that. That's 167-H.

With respect to 167-A we have no objection except we very strongly object to the handwriting which appears at the bottom of the page. It reads as follows in somebody's handwriting: "7/13, Counts 67, 007, RL." That's not our handwriting and not our document. We object to that.

MR. KAUFMAN: Those are government markings, your Honor. We will erase them or cover them up.

THE COURT: All right.

MR. ARKIN: We have a similar acceptance and objection with respect -- that's the second page of that same exhibit, there's writing on it and that will be redacted and no objection.

No objection to 167-B.

167-C, there's handwriting -- excuse me. With respect to 167-B there's handwriting on the bottom of each of the two pages of the document and the Xerox is not very clear and is somewhat illegible at the top. If a more legible copy can be provided and the handwriting removed, we will have no problem.

MR. KAUFMAN: These are copies that the defendant supplied the government. We have offered them the way they produced them.

MR. ARKIN: Similarly --

THE COURT: Wait, wait.

MR. ARKIN: Sorry.

THE COURT: He says that's all he's got because that's what you gave him.

MR. ARKIN: We gave him the microfiche, indicating this piece of plastic, and it is difficult on some of these documents to read. May I hand this up to your Honor so your Honor might see what the problem is?

THE COURT: Yes.

I can't read anything through four except the word "once" which is put in boldface caps. How can I let that in, Mr. Kaufman?

MR. KAUFMAN: Your Honor, is that the first or second page?

THE COURT: The second page.

MR. KAUFMAN: Basically we are offering the contract to give the date of purchase and the amount of land.

THE COURT: You are not offering the second page?

MR. KAUFMAN: We don't have to, no.

THE COURT: Take it out.

MR. ARKIN: If your Honor please, that's part of the overall contract and to make the document complete I believe it is necessary. We will endeavor to have better copies. That's all I am suggesting.

THE COURT: That's what he says he got off the microfiche you gave him.

MR. ARKIN: I suggest it is not the microfiche's fault. This is what we have. I suggest they are capable of producing better copies.

THE COURT: Mr. Kaufman?

MR. KAUFMAN: Your Honor, this is the copy that was provided to us by the defense.

MR. ARKIN: We provided the microfiche and not the copies.

THE COURT: He said you gave him this document in his hand?

MR. ARKIN: No, we gave him the microfiche.

THE COURT: Mr. Kaufman has just said you gave him the document that you have in your hand. Mr. Arkin says he didn't give it to you.

MR. KAUFMAN: The contracts that are of this reduced size, this is not the original size of the contract, were provided by the defendant.

MR. ARKIN: My understanding from the people who handled it is we provided a microfiche.

I have an idea. What we will do at this particular point, if it is all right with your Honor, is to admit this subject to either the government or our, the defense, providing a clearer copy of the second page. It seems to hold up to the trial for this isn't very sensible.

With respect to 167-C the handwriting at the bottom we object to. The document itself, we will try to get a more legible copy, we have no objection to. It is another contract.

With respect to 167-I, it is either I or J, depending upon who wrote it -- can you tell me, Mr. Kaufman?

MR. KAUFMAN: I.

MR. ARKIN: It is an I with a twist at the bottom. It has what appears to be handwriting over it. Assuming that the witness, Mrs. Hampe, can authenticate it and says she received it, then our objection -- we would not have an objection to it. That's Exhibit 167-I.

167-J, again assuming they can prove through her testimony she received it, we have no objection.

167-D has handwriting at the bottom of it which should be redacted and with respect to that letter our position is the same.

THE COURT: I gather, Mr. Kaufman, by your silence you are agreeing to the redacting?

MR. KAUFMAN: Yes, your Honor.

MR. ARKIN: In that file there appears to be a letter with no marking on it. There is no exhibit marking on it dated, August 17, 1973, and signed by Harriet James. I take it this letter is not offered?

MR. KAUFMAN: That letter is a duplicate of one of the corporate letters that Mrs. Hampe provided us with today.

MR. ARKIN: Then there is nothing to comment on then.

I believe that takes care of the exhibits in 167, your Honor.

THE COURT: That's one count. How about the other count? Do you have any comment, Mr. Fleming, against this count witness in this file?

MR. FLEMING: I think this proves the point: I don't think there will be objections to most of these things, if any, with regard to various witnesses. There is no objection, for example, to the brochure, but this 167-E is prepared on the letterhead of an independent real estate broker. I understand it was a Rio Rancho dinner or advertising Rio Rancho dinner and they certainly were selling Rio Rancho land, but this on its face was prepared by an independent broker.

If the government can represent to your Honor that they are going to connect the representations as to projected value to someone that's on trial here, I can understand it.

THE COURT: Mr. Kaufman?

MR. KAUFMAN: Your Honor, we will connect the different offices around the country to AMREP. Regardless of whether they were owned and operated or independent agents, they were all acting as agents for AMREP and all materials were provided by AMREP.

MR. FLEMING: That really doesn't make it --

THE COURT: He says all materials were furnished by AMREP.

MR. FLEMING: If they are going to prove that this document captioned Rio Rancho Estates, L.J. Lee Associates, 234 Pearl Street, Hartford, Connecticut, if they are going to establish that this was sent out from the corporation to L.J. Lee Associates and just handed by L.J. Lee Associates to prospective purchasers, that's one thing. I don't think they are going to do that, your Honor.

THE COURT: That's what he said.

MR. FLEMING: He did not say that.

MR. KAUFMAN: I didn't say that specifically.

THE COURT: What are you going to do about the specific document Mr. Fleming has in his hand?

MR. KAUFMAN: Your Honor, we are going to prove that whatever documents were handed out at dinner parties were provided and approved by AMREP.

THE COURT: That includes the document in your hand, which is, I gather, 167-E.

MR. KAUFMAN: Three pages, your Honor. It is a Rio Rancho document. It has Rio Rancho Estates at Albuquerque, regional representatives in the upper right or upper left. There will be testimony that everything that happened at these sales dinners were supervised, provided and approved by AMREP. Whether or not anybody is going to specifically point to this document and say this particular document was sent out of AMREP headquarters, I don't believe that's going to happen. The government submits that's not necessary.

Once you have testimony that everything that went on at these dinner parties was provided and approved by AMREP, that's sufficient. If you have hundreds of documents that were used at these dinner parties --

THE COURT: You are using this woman to tell this jury that Rio Rancho did that and they are claiming they didn't.

MR. KAUFMAN: That goes to the weight of it, your Honor, not to the admissibility.

She got it at a dinner party.

THE COURT: I assume you will have to show that the broker had the authority to do this.

MR. KAUFMAN: We will, your Honor.

THE COURT: That's all I am asking you.

MR. KAUFMAN: You asked me about that specific document.

THE COURT: I am asking, I am asking about that document to which objection has been made. Mr. Fleming has made the point that this was prepared by somebody who I gather you are going to show was an agent of AMREP?

MR. KAUFMAN: That's correct.

THE COURT: Not by AMPRE itself?

MR. FLEMING: I am pretty sure that L.J. Lee and Associates were independent real estate brokers. They may have handled Rio Rancho land along with homes in Hartford. They were not an agent except they acted as broker.

THE COURT: If you are acting as a broker and you conduct this dinner, you have the authority, I gather, to do what is necessary to sell the land.

MR. FLEMING: No, I think that's a real question. You don't have the authority to misrepresent in a criminal case.

THE COURT: He says he is going to put witnesses on the stand who will say, yes, that document in your hand came out of Rio Rancho.

MR. FLEMING: That's all I am asking.

THE COURT: If he doesn't say it, we will strike the document. It is not going to come in under just the general statement by somebody that everything that appeared at a dinner, a thousand dinners throughout the country, were furnished by Rio Rancho.

MR. KAUFMAN: Those are the contracts that the local brokers had assigned with AMREP, that they would use the materials provided by AMREP.

THE COURT: That doesn't mean that in this case they did.

MR. FLEMING: If you look at 167-E --

THE COURT: Get the broker down here. You want to send these men to jail. I am not going to let the jury consider something of a general nature with the name of somebody else on it and say this was Rio Rancho's approved list.

What have you been working on for a year?

I will take it subject to connection.

MR. ARKIN: With respect to Exhibits 123, which relate to the next count witness, the Henrys, I think

I can go through those pretty rapidly if your Honor wishes me to.

THE COURT: Yes, let's get them out of the way and bring the jury back and get some testimony in here. The whole purpose of pre-trying this case was to get over this nonsense.

I relied on the good faith of counsel when they sat down in that courtroom they were doing something. Obviously you didn't do anything.

MR. ARKIN: With respect to 123-A, again there is handwriting on the bottom of the page in black ink describing it as a count. That should be redacted and there is a large red R in the upper right-hand corner. Aside from that we have no objection to this document.

THE COURT: Is this your witness, Mr. Devorkin?

MR. DEVORKIN: Yes, your Honor. We have no objection to redacting that.

THE COURT: All right.

MR. ARKIN: With respect to 123-C, this does not appear to be a complete document. I believe the contract was two pages. That only has one page.

MR. DEVORKIN: Your Honor, this, I believe, is a document produced by the copy of their microfiche and if they will supply the second page, fine. We don't have any objection to the second page.

MR. ARKIN: We gave the microfiche to the government.

THE COURT: You had better get all the pages in.

MR. DEVORKIN: I will take care of that, your Honor.

MR. ARKIN: That's 123-C, your Honor. We ought to try to get a more legible copy at the same time.

THE COURT: Yes.

MR. ARKIN: With respect to 13-0 there is some ink handwriting on the upper left-hand corner of the third part of this particular exhibit and, again, this particular -- this is a document which purports to be both a contract, a record of property visitation and an assignment of reservation and purchase agreement, three very separate documents all stuck together and one of them is not complete, to wit, the first document, that is the contract which is a two-page document again. It would seem to me as a matter of completeness the two pages ought to be there.

MR. DEVORKIN: If we have the second page, I will put it in with this, your Honor.

MR. ARKIN: I also believe the two documents stapled to that should -- if the government seeks to offer them -- should be offered as separate exhibits because they are not part of the contract or not part of that document.

MR. DEVORKIN: The witness will testify as to what they are.

THE COURT: If they are separate transactions, they should be separate exhibits.

MR. ARKIN: With respect to 123-B, which is also a contract, I have seen enough of them, the difficulty is it is totally unreadable and we should have a clearer copy.

THE COURT: Did you make that copy, Mr. Devorkin? You had better make another one.

MR. DEVORKIN: I am not sure whether we made it or the defendants made it, your Honor. We will try and get a better copy of it. If it is not possible --

THE COURT: It is not legible. How can I let it in if you can't read it?

MR. DEVORKIN: We think the parties we are interested in having the witness discuss are legible. If I can get a better copy, a more legible copy, we will.

MR. ARKIN: We have some dispute on pertinency.

With respect to 123-I, that's just fine, it is even clearer.

123-J, no objection.

123-K we have no objection to the four separate copies of the same document except that in the upper left-hand corner of the pink copy, the fourth copy of this document, there appears some handwriting. I can't identify it. I don't know whose it is. It is in pencil.

THE COURT: Me. Devorkin.

MR. ARKIN: Two different documents, yes. I am talking about the handwriting over in this corner (indicating).

MR. DEVORKIN: This may be the purchaser's writing, your Honor. I will have to find out. If it is, it is on there just to note what the document is for her. If it is not, we will take it off.

THE COURT: Right.

MR. ARKIN: Again, Mrs. Cross advises me, these are actually two separate contracts and probably should be two separate exhibits.

THE COURT: They should be.

MR. DEVORKIN: They are a part of the same transaction. One was used to transfer the customer out of the bottom document into the second document.

THE COURT: All part of one deal?

MR. DEVORKIN: I think it became a continuation of the first contract. The second contract was written as a continuation of the second contract. I will check that, your Honor, but I think that's the way it is.

THE COURT: All right.

MR. ARKIN: 123-L, there appears to be handwriting in the upper left-hand corner, a Xerox of handwriting, I don't know in whose hand it is, but it looks to be the same hand as the previous document. Again, it might be the customer. Mr. Devorkin can inquire.

Aside from that we have no objection.

123-M, no objection.

123-N, no objection.

123-F is a letter, dated November 23, 1970 and addressed to Mr. Henry, and assuming that the government can show that it was received by Mr. Henry, we have no objection to the letter.

I should say at this point that all of my acceptance, that is no objections, are subject to what Mr. Fleming had to say in terms of connection.

THE COURT: Yes.

MR. ARKIN: Then I have here a stack of documents which are called duplicate contracts.

They are marked as exhibits, but they are not going to be offered?

MR. DEVORKIN: That's correct.

MR. ARKIN: 123-H has not been offered.

MR. DEVORKIN: If that happens to be a better copy than one of the ones you are objecting to, I will use the better copy. I think they are duplicates of everything else. The document will speak for itself, whether it is the same document. If it is a clearer copy, we will use it.

MR. ARKIN: I won't go through this ritual. The better copies make me happier. I think that finishes the two-count victims today.

THE COURT: Mr. Glendon, you have been objecting to this testimony.

MR. GLENDON: Yes, sir.

THE COURT: If I find by independent evidence that Mr. Friend was part of this scheme, doesn't this testimony come in against him?

MR. GLENDON: Your Honor, I think the first question, if you find by independent evidence that he had personal knowledge and knowingly intended, I think that's the criteria.

THE COURT: Whatever the normal rule is, if he had independent knowledge of the scheme and he joined it, isn't he liable for everything that went on before?

MR. GLENDON: Well, I think the rule should be, your Honor, that he obviously didn't know about this.

THE COURT: It makes no difference.

MR. GLENDON: And had no part and bears no responsibility for it.

THE COURT: If in a conspiracy and a mail fraud scheme, if this scheme has been running for four years and he joins it in the fifth year, and when I say join it I mean that the court finds by independent evidence that he joined it, then he's hooked by what went on before, whether he knew about it or not.

MR. GLENDON: It would seem to me, your Honor, that at this point it should not be received against him for the reasons we have previously discussed.

THE COURT: I don't see why not.

MR. GLENDON: Obviously --

THE COURT: If at the end of the government's case I find that Mr. Friend has not been tied into the scheme by a preponderance of the independent evidence, then the case against him is dismissed.

MR. GLENDON: Correct.

THE COURT: If I find by a preponderance of the evidence that the question of his involvement is for the jury, then he is bound by what went on before.

MR. GLENDON: Certainly this evidence, your Honor, could not be considered at all in terms of the decision as to whether he joined it knowingly --

THE COURT: But that's not for the jury. That's for me. So I see no reason to exclude it.

I will let the ruling stand on these because I think it will just be confusing to come back and redo it, but if you make future objections along those lines, I am going to overrule them.

MR. GLENDON: Your Honor, the other aspect of it is that these are not, it seems to me, co-conspirator declarations at all.

THE COURT: This is a part of the scheme. This is what the scheme is. That's what they are showing.

This is what the scheme is, and if they show what the scheme is, it is for the jury to determine whether it was a scheme, but whether Mr. Friend is a member is for me to determine. I determine that. If I find he was not, he gets dismissed at the end of the government's case.

If I find that he is, he is in and these portions of the scheme are his whether he knew about them or not.

MR. GLENDON: Well, I think it gets into the problem that has been raised and I think this will be raised some more, your Honor, and that's the Geaney point that once this evidence starts coming in, it is going to be a physical impossibility --

THE COURT: I make the decision, not the jury.

MR. GLENDON: Your Honor will recall what the court said in the Geaney case about the difficulty with the courts making that decision, too.

THE COURT: I have to listen to it and I have to determine whether he is in or not, not the jury. Once I determine by a fair preponderance of the evidence he is in, then he is subject to all this even under Geaney.

MR. GLENDON: I think that's where the prejudice becomes so substantial, your Honor, that I get into the area of a real chance of a mis-trial.

THE COURT: Geaney is perfectly clear. If I find that a defendant -- at least there is sufficient evidence to go to the jury -- he is in. So, I will not reverse my ruling on the two documents that have been offered so far or your general objection to this witness' testimony. I will give you a continuing objection along the same line to these witnesses who testify to transactions prior to his joining the firm because I will overrule your objection, if you make it on him. I am not telling you that I am overruling your objection. I am just allowing the first two in because I don't want to unscramble it and waste time and perhaps confuse the jury.

MR. RUBINO: Your Honor, may I have a continuing objection with respect to any evidence after 1969, September 30th specifically, 1969, in respect to the defendant Oberman?

THE COURT: Ms. Hynes,in your opening you said Oberman was retired from the business. I gather that means he wasn't involved in the scheme any more.

MS. HYNES: No, your Honor, but the government does not concede that he withdrew from the scheme and satisfied the requirements as to what was necessary to withdraw from the scheme.

He retired from the activities of the company. There were some activities that he had after he retired, but the government won't offer proof on that, but under the cases that we have given your Honor already and I believe your Honor has ruled on it that the fact that somebody retires and there are cases on the specific factual situation of someone retiring prior to the running of the statute of limitations but nonetheless having, as Mr. Oberman does here, still substantial stockholdings and the other real theory of the government's case here in terms of the participation of Mr. Oberman was, and the government's evidence will show, that just immediately prior to his retirement he negotiated the purchase of additional land that became part of Rio Rancho and continued to be sold and, in fact, the sales that were made during the period when he was active with the company, those payments and mailings continued on into the statute of limitations.

Indeed, Mrs. Hampe bought her land in 1968 when Mr. Oberman was active in the company. Her mailings began then and continued on into the statutory period.

THE COURT: He isn't talking about that. He is talking about somebody you put on the stand after the date of retirement.

MS. HYNES: I think that raises the same situation that you have with Mr. Friend only the converse, which is that if somebody is a participant in a scheme, the fact that he retires from the business does not mean that he is actively withdrawing affirmatively from the scheme and he is chargeable --

THE COURT: Your statement to the jury was that he was retired and the government was admitting that he was out and gone.

MS. HYNES: He has to disavow the scheme and we can give your Honor another memo on it. We did cover those cases in the original motions to have Mr. Blum dismissed -- Oberman, I am sorry, dismissed out of the case on exactly that ground and Your Honor cited the controlling cases.

THE COURT: I know what I said, but I am thinking about your opening.

MS. HYNES: Your Honor, the fact is, the evidence will show, that Mr. Oberman after 1969, after he negotiated that purchase, he did leave the company. We cannot say that he did not retire. He had some activities and some connection with the company after that. It will not be the subject of our evidence because some of that activity related to toher subdivisions of this company, but under the cases it is very clear that the fact that somebody retires is not an affirmative withdrawal and is still chargeable with the scheme to defraud in the statutory period.

The cases deal specifically with somebody who retired prior to the statute of limitations beginning to run on conspiracy and schemes to defraud with which they are charged.

(Continued on next page.)

THE COURT: I am going to let it in, Mr. Rubino. I will give you a continuing objection.

MR. RUBINO: May I be heard briefly with respect to some of the observations?

THE COURT: It is not going to make any difference on this point. I gather there is going to be evidence of Mr. Oberman's involvement before he retired.

MR. RUBINO: Unless he was, to use your expression, involved at the time of the first mailing which was 1971, in view of the cases that I believe I gave your Honor the memorandum on, specifically the Blue case and the Von Riper, unless they have clear and convincing proof that he was involved at the time of the first mailing there just is no crime in respect of Oberman. Nor was there any real necessity for withdrawal.

Ms. Hynes has referred to the Borrelli case which is not even applicable here in my opinion. There was no crime in existence in 1969. There were no acts that were cognizable as crime, to use the Blue decision words. That only --

THE COURT: She says we just heard one.

MR. RUBINO: You did not hear that he was involved in the scheme in 1971. None of the acts are cognizable as being in the mail fraud scheme unless he was involved --

THE COURT: She said she got this brochure through the mail in 1968.

MR. RUBINO: That is not relevant to the problem. He is charged with a mail fraud scheme in 1971. All of the acts committed prior to that time unless he was in the scheme in 1971 are not admissible against him and do not constitute a crime under the authority of Van Riper and Blue case. She is thinking of the Borrelli case which is not applicable here.

THE COURT: She is saying that this witness who is on the stand says she got this brochure. Mrs. Hampe got the brochure in the mail in 1968.

MR. RUBINO: It does not constitute a crime, unless he was involved in a scheme in 1971. If they prove that then if they prove that he was involved then, then that act marries to it everything that went before it.

But if anything happened in 1968 and Mr. Oberman was not in the scheme in 1971 nothing is admissible against him and there is no crime in respect of Oberman.

The crime is the mailing, your Honor.

MS. HYNES: Your Honor, the point is in 1968 the scheme also involved mailing. In fact, the scheme and the purchase contract that Mrs. Hampe entered into was an installment contract with payments over a period of years and she made payments in 1968. She made payments in '69 and on into the statutory period.

So the scheme Mr. Oberman was involved in in 1968 had as part of its carrying out of that scheme installment payments over a period of years which would include the years within the statutory period.

The Blue case and the Van Riper case are no different. Really it is just a different interpretation that Mr. Rubino and I put on the cases. I think the Blue case supports the government's argument here and the facts are very distinguishable from this.

Mr. Oberman was a participant in a scheme with mailings in 1968 with contracts that were entered into which were installments with mailings that would continue right on into the statutory period and we will show they went into the statutory period.

He purchased an additional 37,000 acre tract of land which was to be subdivided and sold off under the same kind of purchase and installment contacts over the next period of years and that was in furtherance of the scheme to defraud that he was already involved in.

So there will be sufficient evidence to show that Mr. Oberman was an active participant in the scheme to defraud, that he did retire sometime in 1969, but under the cases that retirement is not an affirmative withdrawal from a scheme to defraud once you are shown to be an active participant in the scheme to defraud.

MR. RUBINO: Now Ms. Hynes is telling us that the mailings prior to 1971 and those not mentioned in the indictment constituted a crime. That just is not so, your Honor.

He cannot be charged with any mailings prior to 1971.

THE COURT: If he was part of the scheme as far as Mrs. Hampe was concerned and installments were due and there was a mailing pursuant to that installment after he got out I think he is in on that particular phase of the facts.

I will give you a continuing objection.

MR. RUBINO: May I reserve the right to give you a brief with respect to this area?

THE COURT: You have given me one.

MR. RUBINO: I can enlarge it.

THE COURT: There has to be an end to briefs. I think I have written twenty-seven sorts of orders or memoranda in this case.

MR. RUBINO: I have only given you one.

THE COURT: That one is on this point.

MR. RUBINO: Very well, your Honor.

THE COURT: We will give the lawyers a recess. It looks like they need one.

(Recess)

THE COURT: Yes, Mr. Glendon.

MR. GLENDON: Your Honor, would you hear me briefly on this question?

THE COURT: Yes.

Counsel will sit down or walk out of the courtroom please.

MR. GLENDON: It is clear that this evidence was prepared before Mr. Friend had any connection with the corporation. It is clear, I think, that it in the ordinary course would be admissible.

I believe the rule to be clear that if there is a connection made and your Honor decides that a connection is made through independent evidence by a clear preponderance of the evidence that Mr. Friend knowingly and wilfully had personal knowledge of the conspiracy then certain things can be connected up, acts and declarations of co-conspirators.

I don't see this first as an act or declaration of a co-conspirator. It is documents by third parties, to some extent, signed contracts. That is what they are offering.

I don't think that acts and declarations for another reason, they arenot being offered as I understand it for the truth of what is contained in there. They are just being offered.

THE COURT: I understand your objection. I thought your objection was to her testimony as to what she was told such as Albuquerque, the growth of Albuquerque.

Your objection to Exhibit 167-G, a brochure sent to the witness by the defendants.

MR. GLENDON: Yes, your Honor.

THE COURT: That is what you are objecting to. It is clear that comes in, Mr. Glendon. It is going to come in.

Your client may not be tied up in my mind at the end of the government's case by a preponderance of the evidence. Obviously I would not consider this testimony on his involvement in the scheme.

The jury is entitled to hear it because if I find that it brings him in they may consider this against him on the scheme.

MR. GLENDON: May I say this: In this area, if it goes to the jury on that basis I think we can all agree that personal knowledge cannot be imputed. That is what this is, it is an imputation.

THE COURT: It happens in every conspiracy. I join a narcotics conspiracy three years after, I am bound with what they did three years before whether I knew it or not.

MR. GLENDON: The jury has to consider the question of personal knowledge of any one of these defendants.

THE COURT: You can argue that to the jury. But they are entitled to take every statement made by any other conspirator against your client if they wish. It is your job in summation to convince them that they shouldn't do it.

MR. GLENDON: I think it an extremely difficult task, your Honor, for them to sit here for two months and listen to this evidence particularly evidence where the man was not around, has no basis for any knowledge of it. They have to decide whether Mr. Friend had personal knowledge of it.

THE COURT: No, they don't. I am sorry, once they find him in he is bound by things he never heard of.

MR. GLENDON: When he is bound, the question personal knowledge -- and this is the point I would like to dwell on for a moment.

Whether he is bound is one thing. Whether he had personal knowledge of the scheme has to be shown by direct personal evidence.

THE COURT: I make that ruling.

MR. GLENDON: You make the initial ruling, as I understand it. But the jury has to consider that question too and they cannot consider imputed knowledge. They simply cannot consider that and that is what is being placed before them today as to Mr. Friend who was not there.

It may be, your Honor, and I think it is such a significant, serious question, that if your Honor would permit us I would like to put in a memorandum on this.

I may say, in my own defense, we have not burdened your Honor with memorandum. This is a serious question. We haven't burdened ourselves either.

This is a series question and a complex question.

THE COURT: I suppose Justice Jackson was absolutely right when he could not carry the day and ever since then the development of the law has been that it is just too bad for somebody who was found to be in the conspiracy. All of this stuff falls on his head.

MR. GLENDON: But not, your HOnor, I submit-- and I am serious about it -- not as to personal knowledge.

THE COURT: Absolutely not, Mr. Glendon. I can go out -- if Mr. Friend is found to be in the scheme I can go out and do something and say something and he may know nothing about it, he is out in California and I am here in New York, we haven't spoken to each other in six months. He is stuck with what I have done.

MR. GLENDON: As an act.

THE COURT: Or a statement.

MR. GLENDON: Or a declaration.

THE COURT: Don't you think it is an act to mail somebody a brochure?

MR. GLENDON: But it does not prove his intent. That is the question.

THE COURT: That is your argument to the jury.

MR. GLENDON: It is my argument both places and it is my argument to try to keep the jury from becoming hopelessly enmeshed in a huge melange of evidence that they can't possibly separate out in their own minds.

THE COURT: You can make a motion to sever at the end of the government's case. I have indicated that to you before. This is a possibility, that what comes in shows Mr. Friend on the fringe.

MR. GLENDON: Would your Honor permit us --

THE COURT: I am letting it in, Mr. Glendon. I have the control up through the government's case. If I find enough to deny a motion for a severance and enough to hold him in as a member of the scheme that is all that happens and everything they have heard here they are entitled to use against Mr. Friend if it could be shown that it should be used in that connection. This is the evil of conspiracy law.

I admit it. I am not particularly happy with it and they certainly have changed the law since I have come on the bench in this regard. Before this went to the jury. It does not go to the jury any more, I make the preliminary decision.

MR. GLENDON: There are at least three cases that we would like to bring your Honor's attention to. I am sure your Honor is aware of them.

I would like to point them out to you, the Phillips case which we have cited, the Tevoras case in the Second Circuit and also the Mateo case and I think they speak to the question of personal knowledge which can't be brought around and gone up over one circle and down around the back and dumped on one defendant. He has to know either directly or by circumstantial evidence that there was a conspiracy and that has to be proven that way.

THE COURT: That is true but I make that original determination.

MR. GLENDON: That is right.

THE COURT: Not the jury. So I have to hear the evidence.

MR. GLENDON: That is the point I wanted to make, your HOnor.

THE COURT: Bring the jury back.

(In open court - jury present)

THE COURT: Go ahead.

DIRECT EXAMINATION CONTINUED

BY MR. KAUFMAN:

Q Mrs. Hampe, I believe when we stopped earlier you were talking about the special of the night.

Can you tell us what that was?

A The salesman, the land consultant, brought out that that evening they had a special price for the evening.

Q Was that for all the land being sold or is that for a special piece of land?

A A special piece.

Q What was special about that piece of land?

A Well, it was cheaper.

Q Is that the land you bought that night or was it some of the other land?

A Yes, that was the land.

Q The special land?

A Yes.

Q I show you what has been marked Government's Exhibit 167-C for identification and I ask you if you can recognize that?

A This is our sales contract when we bought at the first dinner.

Q Do you recognize your name and signature on there?

A Yes, I do. That is my husband's signature and my signature underneath.

MR. KAUFMAN: The government offers 167-C, your Honor.

THE COURT: Any objection?

MR. FLEMING: No objection.

MR. ARKIN: No objection.

(Government Exhibit 167-C received in evidence)

xxx

MR. KAUFMAN: If I may just refer to certain parts of the document, your Honor.

It is dated March 8, 1968. Listed here is Unit 11, Block 12, Lot 010, purchase price, $2,990. Down payment, $145. Under monthly payments, $38, payment date the 30th day of the month, the first payment due April 30, 1968.

Q Mrs. Hampe, have you paid in full for the land that youbought in March 1968?

A Yes, we have. The first lot is completely paid for.

Q For what reason did you buy that land at that time?

A Investment only.

MR. FLEMING: Objection.

THE COURT: Overruled.

Q Excuse me?

A Investment only.

Q Did you have any particular reason for buying it as an investment?

A Yes, because I have three sons and we wanted something for them in case they wanted to go to college and that was seven years ago.

Q Seven years from when you bought?

A When we bought the land. That is what we bought it for.

Q Did you tell that to your land consultant?

A Yes.

Q What did he say in response to that?

A Well, it was the best investment we could make because in five years the land had gone up so much in price so, like he pointed out before, it was better than to put it in the bank and better to invest it in the stock market.

Q Do you recall how much your husband was earning in March 1968 approximately?

A About $150 a week.

Q Were you working then?

A Yes, I was part-time.

Q Doing what kind of work?

A I was a waitress.

Q About how much were you earning?

A Well, it depended mostly on tips so I would say between $40, $50 a week.

Q I believe you testified earlier that you attended additional dinners in the next year or two after you bought this piece of land, is that right?

A Yes.

Q Approximately how many dinners did you attend?

A Three or four.

Q For what reason did you go to those dinners?

THE COURT: Let's try and fix the date first.

Q Do you recall the dates of any of those particular dinners?

A Nto the exact dates but it was --

THE COURT: Roughly. You went to one in 1968 and you bought a piece of land. When was the next time you went to a dinner?

THE WITNESS: Maybe once in between '68 and '69.

THE COURT: And then the next one?

THE WITNESS: We went periodically like every six or eight months for a while because at them dinners we were able -- that was the only thing we were able to check to see how our land had done on the market value.

Q How were you able to check on that?

A All you had to do was ask the salesman or land consultant how your land was doing. You had your lot number and he asked the foreman or the head speaker and he could tell you right then and there.

Q What were you told about the land that you had previously purchased?

A It had gone up drastically. That was our reason for going to the dinners.

THE COURT: You say somebody told you that the value of this piece you bought had gone up drastically?

THE WITNESS: Yes. The main speaker for the evening. He didn't tell us, he showed us on black and white on the papers how much it had gone up.

Q On the printed papers?

A Printed papers he had in the briefcase ready to show you.

Q Was your name brought up during any of those dinners?

A Well, when you come to the door they ask you ifyou own property at Rio Rancho and of course we told them we did and then we were seated at a table with two other couples who had not bought land and we got the red ribbon or button, a ribbon it was, pinned on us that we were homesite owners, they called us.

In the beginning they introduced all the homesite owners and they had to stand up and they applauded us because we bought land at Rio Rancho. That is how it all worked at all the dinners we went.

Q Did there come a time when you purchased additional land at Rio Rancho?

A Yes, we did.

Q About when was that?

A That was in '69.

Q Tell us how that came about?

A We live in a small town in Connecticut and a friend, not really our friend but a person we know who works at the Post Office, a very reliable man, he was selling land for Rio Rancho and he called my husband on the phone and he told him that the land is going up five or ten percent overnight and I am coming to your house tonight in case you want to buy some more and that is when we bought our second piece.

Q I showyou what has been marked Government Exhibit 167-B for identification and ask if you can identify that.

A This is the second land we bought.

Q Do you recognize your name and signature on that document?

A Yes, it is my husband and my signature.

Q And this is the contract for the second piece of land?

A Right.

MR. KAUFMAN: The government offers 167-B.

MR. ARKIN: No objection.

xxxxx (Government Exhibit 167-B received in evidence)

MR. KAUFMAN: If I may refer to parts of the contract, your Honor.

THE COURT: Yes.

MR. KAUFMAN: Dated April 26, 1969, the land is in Unit 10, Block 52, Lot 030, then there is another mark after that, total purchase price is $3,590.

THE COURT: How much?

MR. KAUFMAN: $3,590.

Down payment, $165. Monthly payment, $42 payable on the 30th day of the month, the first payment due May 30, 1969.

T5.AM

BY MR. KAUFMAN:

Q Mrs. Hampe, have you paid in full for that land?

A No, we have five months left to pay and as it stands now we are still paying on it and we cannot stop because we would lose all our land because that's according to our contract.

Q What does the contract provide in case you stop making your monthly payments?

A Well, we have three months in case my husband would get sick or we were not able to pay.

Q But, other than that, what does the contract provide in terms of not continuing to make your monthly payments?

A You lose everything.

Q You lose the money you previously paid in?

A Yes, so we cannot afford now not to pay the five months what's left.

Q Why did you buy this second piece of land?

A Investment because our first piece had done so good.

Q Did there come a time when you encountered any difficulty in making payments on your land?

A Yes, it did.

Q When was that, approximately?

A I believe it was in '69.

Q Was it before or after you purchased the second piece of land?

A After.

Q What happened then?

A I wrote to Rio Rancho and asked them for the extension for the three months, like it did say in our contract.

Q What was the reason for asking for the extension?

A Well, my husband had a bone fusion done and was not able to work for a year.

Q Did you receive that extension of payments from the company?

A Yes, we did.

Q How long was that extension?

A Three months.

Q After that three months expired, did you continue making the payments?

A Yes, because I lived up to our contract and I didn't want to lose the money we already put in. We couldn't afford it.

Q Did you make any inquiries of the company in terms of disposing of your land?

A Yes, we did. We desperately wanted to sell because it was very tough with my husband not working for a year and I did write a letter to Rio Rancho myself and I got an answer back that they are not in the resale business. Of course, they had a lot more land to sell so why should they bother with ours.

THE COURT: Is that what they said to you?

THE WITNESS: No, they did not, but I know they have a lot more land to sell.

THE COURT: We are trying to find out what they said to you.

THE WITNESS: Not in the resale business, but I could try a realtor or put an ad in the newspaper they suggested to me.

Q Did you make a number of inquiries of Rio Rancho during the years?

A Yes, I have written to them two or three times and got the same reply.

Q Let me show you three documents, Government's Exhibits 167-I, 167-J, and 167-D, and ask if you can identify these letters.

A This is letters what have been sent to us through the mail from Rio Rancho and this is what have kept us making our payments.

Q Do you recall receiving these letters?

A Yes, this one.

Q Look at J and look at D as well also.

A Yes, this is also after I wrote them.

Q And D?

A Yes.

Q Let me just refer you back to 167-I for a second. On the second page there is some handwriting.

A That's my handwriting.

Q Is that your handwriting?

A Yes.

MR. KAUFMAN: The government would offer these three documents, your Honor.

THE COURT: Any objection excluding the handwriting?

MR. FLEMING: No, sir.

MR. ARKIN: No objection.

XX (Government Exhibits 167-I, 167-J, and 167-D received in evidence.)

THE COURT: Let me see them.

Q Mrs. Hampe, can you tell us what you did to try to resell your land once you were informed that Rio Rancho wouldn't do it for you?

A In one letter we got back from Rio Rancho, I don't believe it is there, but I got back that they suggested Heins Real Estate.

Q Is that H-e-i-n-s?

A Yes.

Q Where is that located?

A Located at Rio Rancho.

Q What did you do?

A And so we got the name and the address and I wrote to him and I got a reply back that he was willing to put up our land for sale. I only wanted to sell the first lot at that time.

He told us the price, which was way up, I would have been glad to sell it for half the price or just my money back at that time. The only thing we had to do was sent $50.

Q Did you send the $50?

A Yes, we did.

Q How long was the land listed with Heins?

A For a year. That $50 was supposed to cover the expenses for a year and that was supposed to be taken off the commission when the land was sold because he told me it was easy to be sold. That lot in particular, unit 11, because it was ready to move into.

Q Was your land sold?

A No, it was not. We did not hear from -- I wrote a couple of letters asking if he possibly could try to sell our land because with my husband not working for a year with his back injury, it was very hard.

Q I believe you said a few minutes ago that when you heard back from Rio Rancho you were told that they couldn't resell your land because they were still selling land, is that right?

A Right.

Q At the time that you purchased your land, what were you told with respect to how much land Rio Rancho had left to sell, do you recall?

A No, not exactly.

Q Were you told anything concerning how fast the land was being sold at Rio Rancho?

A Well, Albuquerque was one of the fastest growing cities in the nation and when Albuquerque had no where to grow, we expected the land was going to be sold rapidly.

Q Were you told how big the Rio Rancho Estates subdivision was?

A No.

MR. ARKIN: May we have a time on that, your Honor?

Q At the time you purchased your land?

MR. ARKIN: Which land?

Q 1968?

A No.

Q Were you told how large Albuquerque was,to the best of your recollection?

A I can't recall.

Q What was your impression from that dinner with respect to the size of Rio Rancho in comparison to the size of Albuquerque?

MR. HOFFINGER: Objection, your Honor.

THE COURT: Sustained.

A Well --

THE COURT: Wait.

A To me --

THE COURT: Wait, you can't answer.

MR. KAUFMAN: You can't answer.

THE WITNESS: Oh.

Q Were you ever told in 1968 at the time you went to the dinner or at any other time that you had contact with Rio Rancho that the Rio Rancho subdivision was going to expand in size?

A No.

Q If you had been told that Rio Rancho was going to expand by an additional 37,000 acres, would you have purchased your land?

MR. HOFFINGER: Objection.

MR. ARKIN: Objection.

THE COURT: Overruled.

Q You can answer.

A No.

Q Why not?

A Because then I would never bought anything. We expected it to be a small community like the films showed.

Q In 1968, when you bought the land and again in 1969, when you bought the additional land, what did you believe about the ability to resell Rio Rancho land?

MR. FLEMING: Objection.

THE COURT: Let's get some foundation for a question like that.

MR. KAUFMAN: Your Honor, I believe a foundation has been laid in terms of the investment inducement.

THE COURT: Not yet.

Q Mrs. Hampe, what do you recall being told to you in connection with your ability to resell the land that you were buying?

A Could you say the question again?

Q Sure. At the dinners --

THE COURT: Was anything said to you at these dinners about your ability to resell the land?

THE WITNESS: No. But it was not going to be hard.

THE COURT: Wait. Don't volunteer anything, now please.

THE WITNESS: That's my opinion.

THE COURT: I am sorry; you are not being asked that. You only answer questions that you are asked by the examining counsel. Don't volunteer anything.

Q Mrs. Hampe, I believe you testified that you were told that the growth of Albuquerque was going to be in one direction and that was through Rio Rancho, is that right?

A Right.

MR. HOFFINGER: Objection.

THE COURT: Overruled.

MR. FLEMING: That's a characterization, your Honor.

Q Mrs. Hampe, had you known that the Albuquerque planning department was saying that the future growth of Albuquerque would be generally in a different direction, would you have purchased?

MR. ARKIN: Objection.

A Never.

THE COURT: Sustained. Strike the answer.

MR. KAUFMAN: Your Honor, I believe we covered that in a brief we submitted.

THE COURT: I know, and I sustained the answer. Your brief came in a half hour ago, but I ran through it.

MR. KAUFMAN: May I have just one moment, your Honor?

THE COURT: Yes.

(Pause.)

Q Mrs. Hampe, I believe you testified a little while ago that you purchased this land as an investment possibly to pay for your son's college education which was seven years in the future, is that right?

A Right.

Q When those seven years elapsed, what did you plan to do with that land?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Was this land that you had planned to hold onto or planned to sell?

MR. ARKIN: Objection.

THE COURT: Sustained. She said she bought it for investment.

Q Mrs. Hampe, had you known that there was no resale market for this land, would you have purchased it?

MR. ARKIN: Objection.

THE COURT: Overruled.

A No, I wouldn't have chanced my son's education for that. As it turned out --

THE COURT: Wait, look, I have asked you several times now not to do that. Now, please don't do it.

THE WITNESS: Okay.

MR. KAUFMAN: No further questions, your Honor.

XXX CROSS EXAMINATION

BY MR. FLEMING:

Q Mrs. Hampe, my name is Peter Fleming and I am an attorney representing Mr. Daniel Friedman and Chester Carity.

MR. FLEMING: Could they stand up, if your Honor please?

THE COURT: No.

Q Do you know Daniel Friedman or Chester Carity?

A No.

Q Did you testify that you would not have purchased land at Rio Rancho if you had known that 37,000 additional acres were to be purchased?

A I would not have purchased land at Rio Rancho.

Q If you had known that 37,000 additional acres were to be purchased, you would not have purchased land, was that your testimony?

A Right.

MR. FLEMING: May I have this marked, please?

XXX (Defendant Chester Carity and Daniel Friedman Exhibit A marked for identification.)

MR. ARKIN: Your Honor, may that be deemed marked on behalf of all defendants?

THE COURT: Let's do it by defendants who offer it.

If you don't object to it, it is in.

MR. ARKIN: Okay.

Q This has been marked A, if your Honor please, Defendant's Exhibit A. Do you recognize that, Mrs. Hampe?

A Yes, I do.

Q Did you not receive that at the first dinner where you purchased land?

A I cannot recall.

Q Did you not -- can you recall -- I will withdraw that.

Did you not receive that before you purchased the second piece of land?

A I have seen this, but I cannot say exactly when I saw this.

Q Let me ask for your best recollection. Do you recall receiving what has been marked Exhibit A at the time that you purchased your first piece of land?

A No.

Q Do you recall receiving it before you purchased your second piece of land?

A I cannot recall exactly when I seen this. I have seen this, but I cannot recall when.

Q You, in fact, produced that to the prosecution, did you not?

A Like I say, I have seen this, but I cannot say --

THE COURT: That's not the question.

Did you give that piece of paper in your hand to the prosecution?

THE WITNESS: Yes, I think we did. We had received it, but I don't know when.

THE COURT: All right.

Q When you received it did you read it?

A Yes.

Q Did you read this portion which is marked "pre-residencial area with first clubhouse" --

MR. KAUFMAN: Your Honor, I object to reading something not in evidence.

THE COURT: Yes.

MR. FLEMING: I agree with that.

I offer it, your Honor.

THE COURT: Any objection?

MR. KAUFMAN: No objection, your Honor.

XX (Defendant Chester Carity and Daniel Friedman Exhibit A received in evidence.)

MR. MR. FLEMING: May I show it to the jury, your Honor?

THE COURT: Yes. Can it be characterized, is it a map or what?

MR. FLEMING: Do you have any objection.

I am talking about this portion which is blocked.

MS. HYNES: Can the record reflect in terms of characterization it is a map of the initial 54,000 acres.

THE COURT: All right.

MR. FLEMING: This is a map of the initial 54,000 acres. There is writing here circled in red with an arrow and it reads:

"Pre-residential area with first clubhouse, pool and other related facilities" and there is a gray area marked in this corner.

Q Whenever you received this, do you recall reading what is circled in red on this map?

A I looked at it and I must have read it.

MR. FLEMING: Do you have the contracts?

Q Your first contract was -- your first purchase was on March 8, 1968, is that correct?

A Yes, that's correct. That's the first.

Q That was in unit 11?

A Right.

Q Your next was in unit 10 on April 26, 1969?

A Right.

Q When you received this map of Rio Rancho, whenever you received it, did you check to see where unit 11 and unit 10 were?

A Yes.

Q Could you mark your lots?

A Not offhand now. I mean it says right here.

MR. KAUFMAN: Your Honor, I don't believe the lots are indicated on that map. I think that's just unit in block.

MR. FLEMING: May I indicate, if your Honor please, that unit 11 is here (indicating), as opposed to the developed area and unit 10 is here (indicating).

MS. HYNES: Your Honor, can I object to Mr. Fleming's characterization of where unit 11 is in terms of the developed area.

THE COURT: Overruled. The map speaks for itself, doesn't it?

Q Is it your testimony that at no time did you know that the initial Rio Rancho property was 55,000 acres?

A I did not know how big it was and I would never have bought if it was that big.

Q You have already testified to that.

Did you have any idea when you purchased the property, your one acre, your first one acre, how many acres there were at Rio Rancho?

A No.

Q Did you have any idea when you purchased your second acre how many acres there were at Rio Rancho?

A No.

Q Did you have any idea when you received this map how many acres it represented?

A No.

Q Did you ask anyone a question?

A No.

Q When you went to check to see how valuable your property was you went to four or five dinners?

A Four at the most.

Q And when you went to those dinners your purpose, you testified, was to find out how much your first purchase then was worth?

A Right.

Q When you discussed that matter with whomever you discussed it, did you ask them how many acres were at Rio Rancho?

A No.

Q When your postman came to you and offered to sell you another acre, do you recall that?

A Yes.

Q Did you ask him how many acres there were at Rio Rancho?

A No.

Q Did you show him this map?

A He had that map.

Q He had that map?

A Yes.

Q Is that when you received the map?

A No, I think we had gotten that earlier. I don't know really when I received the map, I told you before.

Q Is it your best recollection that you received this before you bought your second parcel?

A I don't know when I received the map.

Q You say the postman had the map?

A I think the postman had some type of map.

I don't know if it's exactly the same map or what.

Q Did you ask him how many acres there were at Rio Rancho?

A No.

Q Did you testify that you bought for investment and investment only?

A Right.

Q To protect your children's college education?

A Right.

Q Did you testify that there came a time when your husband became ill?

A Right.

Q And you wrote the company?

A Right.

Q And you received an extension of the time to pay?

A I did.

Q That was in 1969. Withdrawn.

Did you testify that after your husband or after that extension was up you continued to pay for the property?

A Yes.

Q And did you testify you did so because you did not want to lose your investment?

A Right.

Q Did you attempt to sell the property at that time?

A We attempted to sell it two times.

Q Am I correct, Mrs. Hampe, you purchased your first lot, that is your first acre, in March 1968, is that right?

A Right.

Q You purchased your second lot in April 1969?

A Right.

Q And in October 1969 you asked for an extension of the time to pay?

A That is when my husband had the back injury, one time. He had three back injuries so I have tried.

Q And Rio Rancho gave you that extension, isn't tnat correct?

A Right.

Q They did not foreclose on your property?

A No, because it was in our contract.

Q Excuse me?

A It was in our contract that we had three months.

Q They did not foreclose on your property, is that correct?

A They could not.

MR. KAUFMAN: Objection.

THE COURT: Overruled. Did they or didn't they, yes or no?

THE WITNESS: They did not. It was in our contract so they were not able to.

Q You thereafter, you testified, continued to make payments because you were afraid of losing your money?

A Right.

Q Isn't it a fact that you did not attempt to sell your land until two years later in 1971?

A Well, we tried twice to sell our land.

Q Am I correct the first time you tried to sell your land was in 1971?

A Right.

Q Two years --

A And '73.

Q And that was two years after your husband suffered his back injury?

A He had three back injuries.

Q Was it two years after the extension of time by Rio Rancho?

A Yes.

Q Do you own your home in Middlefield?

A Right.

Q Did you buy that through a real estate broker?

A No.

Q You bought it eight years ago?

A Yes.

Q Do you have acreage there, property there? How much land do you have?

A An acre.

Q So your home is on an acre?

A Right.

Q You also have a swimming pool?

A Yes, that is for my husband's therapy.

Q Do you have a swimming pool?

A For my husband's therapy.

THE COURT: Just answer yes or no.

THE WITNESS: Yes.

Q Do you own your house outright now?

A No.

Q You have a mortgage?

A Yes.

Q What did you pay for your house eight years ago?

A We built ourselves.

Q Did you borrow money for construction materials?

A Yes.

Q Do you owe money on the house now?

A Yes.

Q What did the house cost you eight years ago?

A About $35,000.

Q What did the land cost you eight years ago?

A I can't recall.

Q Has the house increased in value?

A Yes.

MR. KAUFMAN: Objection.

THE COURT: Overruled.

Q Has your land increased in value?

A At Rio Rancho?

Q No, at Middlefield, Connecticut.

A I don't know about the land but the house has increased in value.

Q How big was Middlefield, Connecticut when you moved there? How many people lived in the town?

MR. KAUFMAN: I object to this.

A Very small.

Q Can you approximate how many people lived there?

MR. KAUFMAN: Objection.

THE COURT: Overruled.

A 5,000. Four, four, five thousand.

Q How many people live there?

A Four, five thousand.

Q It has not grown?

A No.

Q But the value of your house, in your opinion, has gone up?

A I think so.

Q Did you husband also invest in mutual funds?

A Yes.

Q All right, that is an answer.

A mutual fund is stocks and bonds, is that right?

A Yes.

Q How much money did he invest in mutual funds?

A I cannot say this because that is not -- that is my husband's business and not mine.

Q You did not know?

A I do not know.

Q When did he make this investment in mutual funds?

A I don't know.

Q Was it at or about the same time that you purchased land at Rio Rancho?

A I do not know because I don't know even if he has any.

Q You do not know whether your husband purchased mutual funds?

A No, I really don't.

Q Do you recall your husband saying in your presence that he had purchased mutual funds?

A I really can't recall. If he bought some stock, I don't know.

Q Did he lose his money in the mutual funds?

A I don't know. That is my husband's business. I cannot answer for my husband.

Q Did your husband have anything to do with the investment in the land?

A Yes.

Q But that was your business too?

A We both have our signature on that.

Q Excuse me?

A We both have our signature on the land.

Q Do you recall your husband saying in your presence -- withdrawn.

Do you recall meeting a man named Paul Mahon?

A No.

Q Do you recall being interviewed by a man named Paul Mahon about this case on behalf of the defendants?

A No.

Q In August of this year, August 25, 1976, do you recall a Mr. Paul Mahon visiting with you between 5:30 and a quarter of 7:00 in the evening?

A Yes, I do recall that.

Q He showed you a letter signed by Peter Fleming?

A I guess so.

Q And he told you that he would like to speak toyou about your investment at Rio Rancho?

A Right.

Q And youwere sitting by your pool?

A Right.

Q Do you recall your husband in your presence telling Mr. Mahon that your husband had lost money in mutual funds?

MR. KAUFMAN: Objection.

THE COURT: Overruled.

A That is not my business. Maybe I had gone in the house. I was not there the whole time. I do not know if my husband has mutual funds.

Q Do you recall your husband saying he had no complaints about AMREP?

MR. KAUFMAN: Objection.

THE COURT: Overruled.

A I did not hear him say that. I know he has complaints.

MR. FLEMING: I move that be stricken.

THE COURT: Strike that.

MR. KAUFMAN: That is perfectly responsive.

THE COURT: Strike that.

Q Did you make any complaints to Mr. Mahon?

A I told him --

Q Yes or no please.

A Yes.

Q Did you tell Mr. Mahon that your complaint was that the salesman had misrepresented things and that they claimed that roads were being put in, water was available and sewers when in fact none of those things were done, did you tell him that?

A That is when they promised and I don't know if they were there.

Q Did you tell Mr. Mahon that that was your complaint?

A One of the complaints.

Q Did Mr. Mahon ask you how you knew this had not been done since you had never visited Rio Rancho?

A He didn't never say this.

Q Did you tell him you had learned of all this because you had spoken to the prosecution?

A Never.

Q On your oath?

A I did not say this. I did not learn this from here. This is under oath.

Q Did you tell Mr. Mahon that you had learned about your complaint about sewers and water and so forth from the government when you were interviewed by the government?

A No. I still don't know if there is any sewers or water in there.

MR. FLEMING: Could we limit this to responsive answers?

THE COURT: Yes, answer the questions as they are put to you. Don't volunteer anything please.

xxx (Defendant Chester Carity and Daniel Friedman Exhibit B marked for identification)

Q I show you Carity and Daniel Friedman Exhibit B for identification.

Do you recognize that?

A Yes, because it's the same thing.

Q Is that in fact a questionnaire which was sent to you by the United States government, that is sent to you and your husband?

A It does not say here where it comes from.

Q Do you recognize it as a questionnaire sent to you by the prosecutor's office in connection with your investment at Rio Rancho?

A Well, if you send it or they send it from the government --

THE COURT: You are just being asked a simple question.

Do you recognize that as a questionnaire sent to you by the United States government?

THE WITNESS: I recognize this but I don't know who sent it.

THE COURT: All right

Q Whose handwriting appears on that?

A Mine.

Q You filled it out?

A Right.

MR. FLEMING: I offer it, if your Honor please.

May I have this marked, please.

MR. KAUFMAN: No objection, your Honor.

(Defendant Chester Carity and Daniel Friedman Exhibit B received in evidence)

xxxx

(Defendant Chester Carity and Daniel Friedman Exhibit C marked for identification)

xxx

Q Do you recognize what has been marked Carity and Daniel Friedman Exhibit C for identification?

A Yes.

Q Did you write that?

A My husband's signature.

Q Your husband's signature?

A Yes.

Q Were you present when it was written?

A Yes. It is my husband's signature.

Q To whom was it sent, do you know?

A I don't know.

Q You do not know to whom your husband was writing?

A I guess to the government.

Q Was it an attorney in this questionnaire that he wrote this note?

A It must be.

Q Does that refresh your recollection that the questionnaire came from the government?

MR. KAUFMAN: Your Honor, the government

would be willing to stipulate to the questionnaire.

MR. FLEMING: I am testing the witness' recollection, if your Honor please.

A I guess so. I must have sent this with this.

MR. FLEMING: I offer the letter.

MR. KAUFMAN: We object to C. I don't see the necessity for it or Mrs. Hampe's question sufficiently identifying it.

THE COURT: Overruled.

(Defendant Chester Carity and Daniel Friedman Exhibit C received in evidence)

Q This is a letter dated August 17, 1976 captioned Middlefield, Connecticuit, "Dear Sir" --

MR. KAUFMAN: May I be heard at the side bar?

THE COURT: No, I have admitted it.

Go ahead.

MR. FLEMING: "Dear Sir: Hope this will be to some help. We will be glad to cooperate with you any way we can. Very truly yours" and it is signed by your husband, Mr. Hampe; is that correct?

A Right.

Q And that went with the questionnaire?

A Yes.

Q And that was August 17th of this year, 1976?

A Yes, if that is the date.

Q Do you recall it as being in August of this year?

A It says August. I can't recall the dates so good but that is it. The date is there and I don't put anything else except what is true.

Q Do you recall that that went out this past August, two months ago?

A Yes, it says there.

Q And it went with this questionnaire?

A Yes.

Q And am I correct that you wrote on this questionnaire at the bottom "Dear Sir: We would like to know the reason for this questionnaire or if anything wrong with the land or sale or the company"; did you so write that in August 1976?

A No, I don't recall. I don't know. I can't remember. I will tell you if it is my handwriting.

Q Would you please.

A Yes, that is my handwriting.

Q You bought your first acre at the first dinner that you attended in 1968, is that correct?

A Right.

Q Did you testify there were forty or fifty people at that dinner?

A Yes.

Q Do you know how many other people at that dinner bought land that night?

A I do not know.

Q There were six people at your table?

A Yes.

Q And then there was another person who introduced himself as a land consultant?

A Right .

Q Did you consider him to be a salesman or a land consultant?

A Land consultant.

Q Did anyone else at your table sign a contract that night?

A I don't recall.

Q Before you signed the contract did the salesman start preparing and writing out the contract before you had agreed to buy it?

A Yes.

Q He did do that?

A But it does not count until we get the signature.

Q My question was before you agreed to buy the land did the salesman start to fill out the contract?

A I can't recall when.

Q Did you just testify that yes he had begun to fill out the contract before you had agreed to buy?

A I can't recall if it was just that moment we said yes or it started before. I can't recall.

Q Are you guessing as to your recollection as to what happened?

A No, I can't recall.

Q You say that lots of salesmen started to jump up and down and say "Hold"?

A Right.

Q Do you recall that?

A Yes.

Q Did you testify that you and your husband thought that was pretty funny, yes or no? Did you testify in response to questions this morning that you and your husband thought that was pretty funny?

A Yes.

Q Because you didn't see how anyone could have made up their minds to buy property without having thought about it?

A Yes.

Q Did the salesmen jumping up and down shouting hold as you presently recollect, did that cause you to decide to buy the property?

A No.

Q Did you testify this morning that someone at the dinner showed you a sheet of paper showing the current price of land at Rio Rancho and how much it had gone up in the last five years?

A Right.

Q Do you have that piece of paper?

A No. But I believe it was here this morning.

MR. FLEMING: Does anyone have that piece of paper?

MR. KAUFMAN: I am not sure what you are referring to.

MR. FLEMING: I am referring to a piece of paper that says what the price is today and what it was five years ago.

MR. KAUFMAN: Ask her about that.

MR. FLEMING: This is nothing about five years ago.

THE COURT: The witness says she was given a piece of paper or shown a piece of paper at the time of the first dinner indicating the value of the land at the time of the dinner and the value of the land five years before and she says she thinks it is here today.

Do you have such a piece of paper?

MR. KAUFMAN: I don't believe so. The only thing that she was shown that comes close is 167-E. If Mr. Fleming --

THE COURT: It is what the witness testified not what Mr. Fleming wants to do.

MR. KAUFMAN: All I can do is show her what she has previously seen. I don't know what she is referring to in her mind.

THE COURT: Mr. Kaufmna, the witness was very explicit in saying that she was shown a piece of paper which showed the value of the land at the time of the dinner and the value of the land five years before. That is what she said.

Do you have such a piece of paper?

MR. KAUFMAN: No, your Honor.

THE COURT: All right.

Q These are 167-C in evidence and am I correct that that is the contract which you signed to purchase the first acre in 1968?

A Right.

Q And 167-B in evidence which is a contract which you signed for the second acre with your postman April 26, 1969?

A Right.

Q 167-C, did you read it before you signed it?

A My husbanddid.

Q Did you sign it?

A Yes.

Q Did you read it before you signed it?

A Yes.

Q Did you read the refund guarantee?

A Yes.

Q And that provided that if you went to Rio Rancho within six months you could cancel your purchase for any reason whatsoever, is that right?

A Yes.

Q Did the land consultant tell you that?

A Yes.

Q So he explained that you could cancel your contract if you went to Rio Rancho and looked at your property within the next six months?

A Yes.

Q Did he explain to you that the company arranged flights for that purpose?

A Yes.

Q Did he explain to you that the company would pay your room and board if you came to Rio Rancho for that purpose?

A But we never had the money.

Q Did he tell you that? Did he tell you that the company would pay your room and board if you came to Rio Rancho for that purpose?

A Yes. But that was not free.

Q Did he encourage you to come to Rio Rancho for that purpose, that is to look at your land and decide whether you wanted it or not?

A He didn't encourage either way.

Q He just explained it to you?

A Yes.

Q Did he explain that you could exchange your land for other land?

A Yes, if we decided to move down and build.

Q Did he tell you that if you decided to move down and build at Rio Rancho you could exchange one-half of the acre that you had bought for one-half of an acre in the building area?

A I don't recall one-half acre. I understood it was one whole acre. You could exchange your land --

like we had an acre I certainly wouldnot want that split up.

Q So it was your understanding then that if you bought an acre you could exchange it for an acre if you were going to build?

A Yes.

Q That is your testimony here on your oath?

A Yes, that is what I believe, that I could exchange the land for another, if we wanted to move down there.

Q Do you recall testifying in the grand jury here in this building?

A Yes.

Q And being questioned by Ms. Hynes?

A Right.

Q Were you asked this question and did you give this answer at the first page of your testimony:

"Q In 1968 how much land did you purchase?

"A One acre, two building lots."

Were you asked that question and did yougive that answer?

A Right.

Q What did you mean when you said one acre, two building lots?

A Because there is two building lots to one acre but I would never want myself living in the country, I would never want to live in half an acre. I wanted to have a whole acre if I was going to build.

Q Did you testify under oath before the grand jury that in 1968 you bought one acre, two building lots?

A Right.

MR. KAUFMAN: Objection.

A But I would never want to have a half acre.

THE COURT: Wait, you are being asked what you testifed before the grand jury.

Q Am I correct that that was exactly your understanding in 1968, that one acre equalled two building lots?

A Right.

Q And that if you came down to build you could exchange in for one-half an acre to building on?

A I thought you could exchange for the land in Lot 7, you could exchange Unit 7 in another unit for the whole piece, like one acre.

Q To build on?

A Yes.

Q What did you mean in the grand jury when you said two building lots?

A Two building lots for resale value.

THE COURT: We will suspend for lunch. Return at 2:15 please.

(Jury left the courtroom)

(Luncheon recess)

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AFTERNOON SESSION

2:15 p.m.

(In open court; jury present.)

BERIT HAMPE, resumed.

THE COURT: You may proceed, Mr. Fleming.

MR. FLEMING: Thank you, your Honor.

CROSS EXAMINATION (Continued)

BY MR. FLEMING:

Q Mrs. Hampe, at these dinners you attended at one of which you purchased one acre of land, did the speakers talk at all about the development of Rio Rancho as a community?

A Yes.

Q Did they talk at all about the advantages of moving to Rio Rancho as a place to live?

A They talked some about that, but we were not interested.

MR. FLEMING: I am sorry, your Honor, the witness has made it clear she wasn't interested.

THE COURT: Please don't volunteer. You weren't asked whether you were interested or not. You were asked whether the officer spoke about your moving to Rio Rancho.

THE WITNESS: Yes.

Q That was certainly at least a part of their presentation, that is Rio Rancho as a place to live?

A Right.

Q And the company's intention to develop Rio Rancho as a planned community?

A Right.

Q In fact, the movie that you saw was about that, was it not?

A Yes.

XXX (Defendant Chester Carity and Daniel Friedman Exhibit D marked for identification.)

Q Let me show you Carity and Daniel Friedman Exhibit D for identification and ask if you received that at the dinner.

A Not at the dinner, but in the mail.

Q You received it in the mail?

A Yes.

Q Was this after you had purchased your first acre?

A Yes.

Q Was it before you purchased your second acre?

A I cannot recall if it was.

MR. FLEMING: I offer it, your Honor.

THE COURT: Any objection?

MR. KAUFMAN: No objection, your Honor.

XXX (Defendant Chester Carity and Daniel Friedman Exhibit D received in evidence.)

Q D in evidence is entitled "30 Model Home Plans in Beautiful Rio Rancho Estates," is that correct?

A Yes.

Q There is a picture on the cover, is there not?

A Yes.

Q Looking out that window there is a lot of land, is there not?

A Yes.

Q Did you ever ask anyone why there was so much land outside the window in that picture?

A I didn't look at it that way.

MR. FLEMING: May I just show the cover to the jury?

Q Exhibit A, which is the map, am I correct there appears down here a scale one and one half inches equals one mile?

A Right.

Q And there are numbers across the top and along the side showing that the property is 15 and a half miles long and 6 miles wide, is that right?

A Yes.

Q That's about 90 square miles of land, is that right?

A Yes.

Q You had that before you purchased your second acre?

MR. KAUFMAN: Objection, your Honor. I think it has been asked and answered a number of times.

THE COURT: Overruled.

A I told you before, I don't know whether I received this, before or after.

Q Did you testify at least the postman had it?

A Yes.

Q So that before you purchased your second acre, you knew that the property was 90 square miles?

A That was never pointed out in that way. They showed the map, but maybe we didn't look -- they didn't say it the way you say it.

Q Did you see the map?

A Yes.

Q Did you see the scale?

A Yes.

Q Did you see the size of the development on the map?

A Yes.

Q Did you see the 15 miles long and the 6 miles wide?

A It didn't say 15 miles here. We just saw the map.

Q You mean you didn't read it?

A No.

Q How long has this been in your possession, to your best recollection?

A I still don't know really how big Rio Rancho is.

THE COURT: That isn't the question, is it?

The question is how long has that document, Exhibit A, been in your possession because I gather from the testimony you are the one who furnished that document to the government.

THE WITNESS: Well, maybe four or five years, four years probably.

Q And perhaps before you purchased your second acre?

A I told you, I cannot recall if we got it before then or after.

C

Q Mrs. Hampe, two more questions. You appeared in the grand jury January 21, 1975, is that correct?

A Yes.

Q At any time before you spoke to the prosecution and appeared in the grand jury, did you ever tell anyone at Rio Rancho that you believed you had been cheated?

A In Rio Rancho?

Q Yes.

A Not that I can recall.

Q Did you ever ask anyone at Rio Rancho to give you your money back?

A At one of the dinners we wanted to sell so bad and I understand AMREP Corporation have also land in Florida and we have written and asked if we could exchange our land at Rio Rancho for the Florida property which is Silver Springs. They were willing to sell to us, but they are not willing to exchange Rio Rancho property and it is still the same corporation.

MR. FLEMING: May I have the answer struck, your honor?

THE COURT: Strike the answer. The jury will disregard it.

Q Did you ever ask anyone at Rio Rancho before you spoke to the prosecution for your money back?

A No.

Q Did you ever ask anyone at AMREP for your money back?

A I wanted them to sell. No.

Q At any time before you spoke to the prosecution did you ever tell anyone at AMREP Corporation that you believed you had been cheated?

A No.

MR. FLEMING: I have nothing further, your Honor.

THE COURT: Any questions?

MR. ARKIN: No questions, your Honor.

THE COURT: Any other defendant have any questions?

MR. HOFFINGER: No, your Honor.

MR. RUBINO: No, your Honor.

XXX

REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mrs. Hampe, do you recall when it was that you provided the government with the documents that you have testified about here today?

A Before the grand jury.

Q Do you recall sending anything in the mail to our office within the last few months?

A Most of the --

Q Excuse me.

A Before the grand jury.

Q That was in January of '75. What I am asking is do you recall sending anything in the mail to our office within the last few months.

A A couple of sheets maybe. I can't really recall what was sent.

Q Do you know whether or not you or your husband sent along a letter when you sent us those documents?

A No, I can't recall. Maybe if I see it. I don't know.

THE COURT: What's the problem?

MR. KAUFMAN: Nothing, your Honor. Mr. Fleming is willing to agree to the point that we were trying to make earlier that the letter that Mr. Fleming introduced at the same time he introduced the questionnaire did not accompany the questionnaire.

MR. FLEMING: If that's the fact, I am certainly willing to accept it.

MR. KAUFMAN: That's the fact.

THE COURT: All right. The letter was August '76, as I remember.

MR. KAUFMAN: Correct.

MR. FLEMING: That's correct, your honor.

Q Mrs. Hampe, you recall Mr. Fleming asking you about the six months cancellation provision?

A Yes.

Q He asked you whether or not you were told that the company arranged flights and he asked you whether or not you were told that the company paid for room and board. Do you remember him asking you about that?

A Yes.

Q And I believe you said you were told that, is that right?

A Yes.

Q Were you told how much it would cost you to take advantage of that flight to Albuquerque?

A 465 or $565 and at that time we could not afford that.

MR. FLEMING: I object o that.

THE COURT: Overruled.

MR. FLEMING: Not the answer, but the explanation, if your Honor please. I have no objection to the price.

THE COURT: Strike the explanation.

Q Did you take advantage of that company flight?

A No, because we could not affird it.

MR. ARKIN: Move to strike the last portion, your Honor.

THE COURT: Strike that portion.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: You may step down.

XXX RECROSS EXAMINATION

BY MR. FLEMING:

Q That $500 price was for the couple, for you and Mr. Hampe?

A 565 for the two of us.

Q For the two of you?

A Yes.

Q When you got to Albuquerque your room and board would be paid for by the company, is that right?

A I believe so.

Q They would arrange special flights so that you would get that rate?

A Right.

Q You in fact had invested something like $2900 or agreed to invest $2900?

A We did not pay that at one time.

Q You had agreed to pay it, your contract wasto pay it?

A Which we lived up to.

THE COURT: Nobody is asking you whether you lived up to it or not. Nobody is charging that you didn't live up to it.

Q Thereafter without having gone out to Albuquerque, you committed to pay an additional $3590, is that right?

A Yes.

Q So that you had approximatly $6500 --

MR. KAUFMAN: Objection, I think this goes beyond the redirect.

THE COURT: Overruled.

Q You had approximately $6500 in contractual obligations for land in Rio Rancho?

A Right.

Q Did you build the swimming pool before or after --

THE COURT: No, no, that's out.

Next witness.

(Witness excused.)

MR. DEVORKIN: The government calls Helen Henry.

XXX HELEN HENRY, called as a witness by the government, being first duly sworn, testified as follows:

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: You may.

XXX DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mrs. Henry, where do you live?

A 173 Strawtown Road, New City, New York.

Q If you don't mind me asking, how old are you?

A 51.

Q Do you have any family?

A Yes, I do.

Q Who are they?

A Two boys and a girl.

Q Are you married?

A Yes.

Q Is your husband still alive?

A Yes.

THE COURT: Tell us where Strawtown, New York is.

THE WITNESS: No, it is Strawtown Road, New City, New York.

THE COURT: Go ahead.

Q Are you currently employed?

A Yes, I am.

Q What kind of work do you do?

A Domestic work.

Q How much money do you earn doing that?

A Oh, I do it parttime, about 2,000 a year.

Q Does your husband work now?

A No.

Q Does he have any sources of income besides your own?

A Social Security.

Q How much does he get in Social Security?

A He has Social Security income plus a small sick benefit that he gets from his former employer amounting to $500 a month.

Q Do you have any other sources?

THE COURT: Wait. You mean the Social Security payments plus the money from the former employer both add up to $500?

THE WITNESS: Right.

THE COURT: That would be a disability benefit?

THE WITNESS: Right.

Q Do you and your husband have any other sources of income?

A I have an apartment in our home which we have made recently for a small income.

Q How [illegible] do you obtain from that?

A About 200.

Q What kind of work did your --

THE COURT: 200 a month?

THE WITNESS: Yes.

Q What kind of work did your husband do when he was employed?

A He worked for American Cyanimid.

Q What did he do for them?

A He was a supervisor.

Q How much did he earn at that job?

A Approximately $300 a week.

Q What's your own educational background?

A High school and one year of college.

Q What's your husband's educational background?

A High school.

Q Do you or your children own any lots at Rio Rancho Estates?

A We do.

Q Do your children also?

A Yes, they do.

Q One lot or more than one lot?

A More.

Q How much money have you and your husband paid to date on your own lots at Rio Rancho Estates?

THE COURT: First, let's find out how many lots she owns.

MR. DEVORKIN: I think it may be more understandable, your Honor, if we take it through step by step.

THE COURT: I think it would be more understandable if I know what she owns, her husband owns and her children own.

Q Do you know how many building lots do you and your husband own or have a contract for today?

A I can't really state in lots. I will state in units, the lots that I have in units.

Q All right.

A One acre in unit 10 or unit 11, an acre in unit 13, almost three acres in unit 17.

Q Do you know how many lots your children own?

A In unit 2 they have about an acre and a quarter. In unit 10 they have I believe two commercial lots.

In unit 17 they have approximately three acres.

Q How much have you and your husband paid for your own property at Rio Rancho as of today?

A 27m000.

Q When did you first have any contact with Rio Rancho Estates?

A Back in 1968.

Q What was the nature of that contact?

A I received an invitation to a dinner through the mail.

Q Was that the first such invitation you had received?

A To my knowledge.

Q Did you go to the dinner?

A I did.

Q Did you go alone or with someone?

A No, I brought my two sons and daughter.

THE COURT: How old are these sons and daughter?

THE WITNESS: At that time or now?

THE COURT: We can add it up. How old were they then?

THE WITNESS: Well, can I say what they are now?

THE COURT: All right, we will subtract.

THE WITNESS: Right. My son is 22. The other son is 28 and my daughter is 31.

THE COURT: All right.

Q Did your husband go to that dinner also?

A No, he did not.

Q For what purpose did you go to the dinner?

A We were interested in Albuquerque and curiosity.

Q Where was the dinner held?

A In White Plains.

Q At a restaurant there?

A Yes.

Q Please describe as best you can exactly what happened at that restaurant from the time you arrived there.

A We came in the door, were greeted by a representative, I gather, someone at the door. We signed a register book, were given some papers and a booklet describing the community.

We were introduced to a sales representative and then taken to our table.

Q Do you recall the sales representative's name?

A Yes, it was Betty Goff.

Q When you got to your table, how many people were seated there?

A I don't believe anyone yet.

Q When the dinner started how many were at your table?

A Approximately six or eight.

Q How many tables were there in the room?

A I seem to recall about ten.

Q Did you have any conversations at your table with the sales representative?

A We did.

(Continued on next page.)

Q What did you say and what did she say?

A I had explained that we had been to Albuquerque in '63 and I was interested in this development because of the southwest.

She informed me that I would be very happy to hear and to see the development of Albuquerque and then we talked generally about our families.

Q After you talked with her what if anything happened next?

A Then the speaker for the evening stood before the podium and explained to us what the meeting or the dinner was going to be about.

Q In substance as best you remember, what were his words? What did the speaker say that evening from the beginning?

A He toldus there was a community in Albuquerque that was growing rapidly. He told us there would be something for us each that we would be interested in learning about the development of this new community and he said after we had eaten he would proceed to tell us more.

Q Did you have dinner then?

A We did.

Q What happened after dinner, if anything?

A After dinner he introduced a film.

Q What did he say when he introduced the film?

A He explained to us that Albuquerque was closed off for building or developing on three sides. He explained that Albuquerque itself had grown greatly. They elaborated by slides that were bieng flashed on a screen as to the banks, the educational system, the climate and as an escape from taxation and as a future investment.

Q Did he mention at that time any other projects that AMREP Corporation or Rio Rancho was involved in?

A I don't recall if he said anything at that particular time or if it was later in the program.

Q What do you remember him saying about that subject?

A We were told that they had previously built a developed area in the south called Rainbow Estates, I believe.

Q Did he say what state it was in?

A In Florida.

Q What did he say about Rainbow?

A That ATC had this community, a very successful community down there and that it was sold out and they were starting a new one in Albuquerque.

Q On the basis of that what did you think he meant by a successful community?

MR. FLEMING: Objection to that, your Honor.

THE COURT: Overruled.

Q You may answer the question.

On the basis of what he said what did you think he meant by the words "successful community"?

A I felt it was a thriving, finished developed area.

Q Were the sales people, including the one at your table, introduced in any way at any time in the dinner?

A Yes, they were all introduced before we ate.

Q How were they introduced?

A As land consultants.

Q What did you understand that to mean?

A Real estate agents.

Q After the speaker introduced the film I take it you saw this film?

A Yes, we did.

Q Do you recall the name of the film you saw at this time?

A West Side Story.

Q Do you recall whether you saw another film that night or not?

A I don't recall seeing another film that night.

Q What points do you remember about the film you saw that night?

A Particularly interested me the growth of Albuquerque being I had been there, the banks. I was interested in the university because I had children that I had hoped would attend a college.

I remember the bridges going from Albuquerque to the west side where Rio Rancho was being built. I was impressed by the entrance of the film to Rio Rancho Estates, beautifully landscaped. I was impressed by the pool, the clubhouse.

Q Did the film say anything at all about the relationship between Albuquerque and Rio Rancho Estates?

MR. FLEMING: Was the witness finished with her answer?

THE WITNESS: I would also say that they showed parts of the Siandia Mountains. They showed the areas around Albuquerque. That was it.

Q Did the film make or say anything with respect to the relationship between Rio Rancho Estates and Albuquerqu

A Yes. It specified that Albuquerque could only grow from the west side because of it being blocked by government land, the mountains and an Indian reservation.

Q Did it say anything about Rio Rancho in connection with that?

A That this is where all the expansion would take place.

Q Where was that?

A Into Rio Rancho Estates.

Q After the film what if anything did the speaker do?

A The speaking reiterated some of the features from the film.

Q What did he say?

A Calling our attention to the advantages that owning property in Rio Rancho would bring to the buyer such as a good living community and as an investment.

Q What points if any did the speaker make about Rio Rancho being an investment?

A He just stated that it would be an investment, no elaboration on that.

Q Did he give any reasons why it was a good investment?

MR. FLEMING: Objection.

THE COURT: Sustained. He said nothing else.

Q What else do you remember the speaker saying at all at that time after the film?

A He just reiterated what he had shown on the film about the expansion going into Rio Rancho Estates.

Q Was anything said at that time about other investments or other investment opportunities?

A He said that he recalled the stock market crash. He told us how land is a good investment, a safe investment.

Q Did he say anything about other investments?

A He said that stocks and bonds are not stabilized whereas land is always something tangible and you make an investment in land and you have a tangible investment.

Q Was anything said with respect to the land values in Albuquerque?

A No.

Q When the speaker was finished speaking, what if anything happened?

A Our land consultant proceeded to show us the pamphlets on our tables and we discussed different units in different lots that were available and while we were talking about this other representatives were calling out hold unit 13, lot 2, for example.

Q Did your land consultant say anything about what was going on?

A I asked her what this meant and she said that someone else was interested in that lot or that there was a hold on it and therefore that was not available.

Q What did you think was going on as these holds were being called out?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q What did you understand the process of holds meant on the basis --

THE COURT: She said she asked the consultant to describe it for her.

Q On the basis of everything you saw and heard that night during the presentation, what did you feel were the main inducements being offered to buy Rio Rancho lots?

MR. FLEMING: Objection.

THE COURT: You ought to have her specify. I read all the stuff you gave me and it is not important for this question. She can tell us what inducements were held out to her.

Q Mrs. Henry, what inducements were held out to you by your Rio Rancho lots that night?

A I was induced to buy them because of the main thing was the investment part because I had three children going to school and I felt this might be a very good safe investment and when I heard the lots being called out and the units I thought this must be a good investment or people would not be buying them so fast.

Q Were there any other reasons you thought it was a good investment or other reasons you thought it a good investment for you?

A Yes, my husband had a heart attack and the doctor at the Veterans Hospital told me they didn't expect he would life and I gather I was panicky about facing the future with bringing up three children and having a college education to give them that I was anxious to make good investment for the future.

Q ~~Did you tell~~ Mrs. Goff,your salesperson, about these factors?

A I cannot recall whether I discussed my husband's health condition with her. The college for the future of the children, yes.

Q What did she say, if anything?

A She felt it would be a good investment also.

Q Did you buy any lots that night?

A I did.

Q How many?

A I bought in Unit 13 that night and I bought two acres, I guess four lots.

THE COURT: Two acres in Unit 13?

THE WITNESS: Yes.

Q Mrs. Henry, showing you what has been marked Government Exhibit 123-B for identification; do you recognize it?

A Yes, I do.

Q What is it?

A That is my purchase for the night, the four lots, Unit 13.

Q Is that your signature on the bottom?

A Yes, it is.

Q Is that your husband's signature?

A Yes, it is.

MR. DEVORKIN: I offer 123-B.

MR. FLEMING: No objection.

(Government Exhibit 1230B received in evidence)

THE COURT: What is the date?

MR. DEVORKIN: May 7, 1968.

May I read a portion?

THE COURT: Yes.

MR. DEVORKIN: Dated May 7, 1968, Unit 13, Block 18, Lots 28, 29, 30, 31. Up here it says two acres. Purchase price is $6380. There is a discount of

$465 for a net purchase price of $5915. The down payment herewith is $887 and monthly payments are listed as $77.

Q Mrs. Henry, did you use your own check to pay for this down payment?

A No, I did not. They had checks there.

Q Is that a check that you used?

A Yes.

Q On the basis of the dinner presentation that night, how rapidly did you believe development would reach the lots that you bought?

MR. ARKIN: Objection.

THE COURT: I need more than that.

Q Were there discussions that night about developed areas at Rio Rancho Estates?

A Yes, there was.

Q What if anything was said about the development in the developed areas of Rio Rancho Estates?

A It was in the film. They showed pictures of homes that were already constructed and people were living there.

THE COURT: Did they ever tell you anything about how soon the development would reach the units where you bought? In other words, were yougiven --

THE WITNESS: A specific time?

THE COURT: Yes, did they give you any indication of when you could expect the developed areas would reach where you bought?

THE WITNESS: I was given an indication.

THE COURT: That is what we are trying to find out.

How did they indicate this to you?

THE WITNESS: By the past experience or by the past developments that is already there and the fact that houses were being constructed so fast that they weren't able to supply them.

THE COURT: This is what they told you?

THE WITNESS: This is what they told me.

Q On the basis of what they told you when did you think development would reach your own lots?

MR. ARKIN: Objection.

THE COURT: Overruled.

Q You may answer the question.

A From three to five years.

Q Did they give you any indication about resale value of your lots?

A Not at that time.

Q Why did you buy four lots?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Were you considering at any time relocating to Rio Rancho Estates or to Albuquerque?

A At this time I was rather confused due to my husband's health condition and I also have had problems. I have asthma and I was thinking I might relocate in the west for health reasons.

Q Were any of the lots you purchased that night for that purpose?

A I felt I would have one lot that I would build on and then the others I could use for investment.

Q When you bought these Rio Rancho lots that night, did you have any other investments?

A We had invested in war bonds.

Q How much money did you have invested?

A Maybe about $1,000.

Q Did you have any other investments?

A No.

Q Did you have any money in the bank?

A No.

Q Did you have any unusual financial obligations?

A Yes, doctor bills.

Q Do you recall how large they were?

A Well, large enough that the Internal Revenue kept calling me in.

Q What were those doctor bills from?

A From my husband's heart condition and I had several surgeries.

Q Did you ever visit your property?

A We did.

Q When was that?

A That same year.

Q Did you go alone?

A No, my family.

Q Your children and your husband?

A Children and husband, yes. Also my parents.

Q Exactly what happened when you went to Rio Rancho?

MR. FLEMING: Also her parents?

MR. DEVORKIN: Yes.

Q Exactly what happened when you went to Rio Rancho that year?

A We took a camper out because we wanted to spend time --

Q What happened when you got there?

A We went up to the business office and they told us where our lots were and assigned a sales representative to us who took us in a car to our lots.

Q What happened when you got to your lots?

A We could not find them.

Q How long did it take you to find them?

A Well, we had to get out and brush the sand off of some of the stakes that were in the ground and I would say a good twenty minutes.

Q What happened when you finally got there?

A We looked at it.

Q Did you haveany conversations with the sales representative?

A Yes.

Q What did you say to him and what did he say to you?

A I said to him, "Oh, no, this isn't what we got" and he said, "Yes, why do you feel so upset about it", and I said, "Well, I thought there was a lot more developing going on".

He said there is and I will show it to you. We talked about the future development and how rapidly it was going and he told me not to be discouraged.

Q What did he say about that at that time?

MR. ARKIN: About what?

Q What did he say to you about the development?

A He said it was growing rapidly.

Q Did he say anything else?

THE COURT: He said he would take her and show it to her.

THE WITNESS: He also said something about a resale value I believe that was at that particular time.

"Don't worry, if you want to come in here and build before the development reaches your area we will give you exchange rights and then you will have a place in the developed area."

Q Did he say anything about resales?

THE COURT: That is an exchange, isn't it?

THE WITNESS: Yes.

THE COURT: In other words, they would give you property in the developed area if you wanted to build a house for the land that you had that you found when you were there?

THE WITNESS: Right.

THE COURT: That is an exchange and not a resale.

THE WITNESS: Then he also told us about a resale that they would have after the properties were all bought up.

THE COURT: After the properties were all bought up?

THE WITNESS: Yes.

THE COURT: They would have a resale value?

THE WITNESS: Yes, they would have a resale sale.

Q Who would have a resale sale?

A Rio Rancho.

Q In connection with the exchange privilege, did he indicate how many lots that you owned you would be able to exchange?

A He did say that being we owned four lots we would only be able to exchange one lot for a developed area which satisfied me.

Q Did he show you any other lots?

A Then he suggested since we had already purchased residential property this gave us a priority in obtaining commercial property, which we did.

Q Did he say anything about Albuquerque or land vaules in Albuquerque or Albuquerque's growth?

A Oh, yes. He said that Albuquerque was growing.

Q Did he say what direction it was growing?

A The west side.

Q Did he say anything about Albuquerque in connection with Rio Rancho Estates?

A Well, he said that it would offer a good working opportunity and it would increase the value of Rio Rancho land.

Q Did he explain why it would increase the land of Ric Rancho land?

A No. I knew. I took for granted if it was growing in Albuquerque naturally it would enhance the value of Rio Rancho.

Q Did you keep your property at that time?

A Yes.

Q Did you sign anything?

A Yes.

Q What did you sign?

A I signed a visitation form.

Q Which said that you were satisfied with your property?

A When I signed that I said I am reluctantly signing that I am satisfied.

MR. FLEIMING: I am sorry, that was not the question.

THE COURT: Sustained.

Q When you signed that piece of paper, what did you say and what was said to you, if anything?

A I signed it.

Q Did yousay anything?

A I said that I was disappointed with what I found but since the property was growing that I am satisfied.

Q What did the salesperson say to you, if anythin

A I made a wise choice.

Q Did you attend any other dinners after that?

A Yes, I did.

Q Approximately how many?

A I would say between eight and ten.

Q Did you buy any more property?

A Yes, I did.

Q For what purpose?

A All for investment.

Q When did you buy your next property?

A I think in '69.

Q How did you go about buying your next property?

A Dinner again.

Q Did you get another invitation to the dinner?

A Yes.

Q Did you go alone to that dinner?

A No.

Q Who did you go with?

A My son. Sons.

Q How was that dinenr run in comparison to the dinner you have already described?

MR. ARKIN: Objection.

THE COURT: I don't understand the question.

Q When yougot to that dinner was the presentation similar or different than the first dinner?

A I believe at that dinner we had two films.

Q Was there anything different about the presentation you heard?

MR. ARKIN: Objection.

THE COURT: Overruled. She is being asked to distinguish between what happened the second time from the first time. There is nothing wrong with that question.

A Yes, this one was different in the fact that here we were told our property had increased in value.

Q Were you told anything else?

A We were told and shown through the other film that Rio Rancho was growing.

Q Was Mrs. Goff at that second dinner?

A Yes.

Q Did you have any conversations with her about your property or about the prices of your property?

A Yes.

Q What did she say?

A She was very happy for us that things were going so well.

Q Did she say anything about resale of your property?

A Not at that particular time.

Q Was anything said at that dinner about resale of your property?

A Oh, yes. We were told that they would have a resale as soon as all the property was sold out and that it was going very rapidly.

Q Were there any other differences in the speaker's presentation that night in comparison to the first dinner?

A Yes.

Q What other differences were there?

A He approached us through the aspect of being property owners rather than just coming for the first time to the meeting.

Q What did he say?

A He welcomed us as property owners. He told us that our property had increased in value and we were given sheets of paper showing the financial status or the financial increase on our property or on the lots.

Q Do you remember the name of the speaker that night?

A I think it was Lenny Geller.

Q Did you buy any lots that night?

A That was the time we bought the commercial.

Q Did you buy them for yourself or for someone else?

A My sons bought them.

Q They were under age at this point?

A Yes, they were.

Q So who signed the contract?

A I did.

MR. FLEMING: If your Honor please, if there is going to be a conclusion as to under age I would like the age established in 1969. I understand one of the sons is twenty-eight today.

THE COURT: In 1969 the daughter who is now twenty-one would have been twenty-four and the son who is now twenty-eight would have been twenty-one. The other son twenty-two would have been fifteen.

Q Showing you what is marked as Government's Exhibit 123-I for identification, do you recognize that?

A Yes, I do.

Q What is it?

A This is the commercial lot or was really multiple dwelling lot for my sons.

Q That is the contract for it?

A Yes.

Q Who signed that contract?

A Helen Henry in trust for Robert Henry and John Henry.

MR. DEVORKIN: I offer 123-I.

THE COURT: I don't understand. You say the sons bought it. You bought it in trust for your sons.

THE WITNESS: Right.

THE COURT: Your sons didn't buy it.

THE WITNESS: They paid for it.

THE COURT: They paid for it?

THE WITNESS: Yes, they did.

THE COURT: How does a fifteen year old boy pay for it?

THE WITNESS: They had a lawn business and they cut lawns and the other boys -- they had been cutting laws since they were twelve and the other boy was painting.

THE COURT: You had enough money for this?

THE WITNESS: They had saved their money f[illegible] college and this is what they used.

Q They took money and gave it to you to make the payments on this contract?

A Yes, they did.

THE COURT: Let me get this straight. One son was twenty-one years old then and hadn't he started college yet?

THE WITNESS: No. Twenty-one?

THE COURT: You say you have one son who is twenty-eight years old today. Seven years ago he would have been twenty-one.

My question is had he started college by then?

THE WITNESS: He had been going to academy and he must have been in college, yes.

THE COURT: Where?

THE WITNESS: Atlantic Union College in South Lancaster, Massachusetts.

THE COURT: All right.

(Government's Exhibit 123-I received in evidence)

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MR. DEVORKIN: Your Honor, may I read from a portion of this?

THE COURT: Yes.

MR. DEVORKIN: This is dated May 4, 1969.

(Mr. Devorkin read from Government 123 in evidence to the jury.)

BY MR. DEVORKIN:

Q Mrs. Henry, what did you understand multiple dwelling lots or commercial lots meant?

A Multiple dwelling. We were particularly talking about condominium purchases at that time.

They said that they were even renting property to build condominiums or motels.

Q You understood this was that kind of property?

A Yes, I did.

Q Why did you select commercial property or multiple dwelling property?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A I felt if residential was a good investment that commercial would be a doubly good investment.

Q You said, I believe, that there was a discussion or you were told that there would be a resale office?

A Oh, yes.

Q After Rio Rancho had sold out the property?

A Yes.

Q Who was going to operate the resale office, what were you told about that?

A Rio Rancho would hold it --

Q Would operate it?

A Yes.

Q Did Mrs. Goff say anything about the value or otherwise of these commercial lots that you were buying for the boys?

A Yes, Mrs. Goff felt or Mrs. Goff said that this property was an extremely good investment for the boys because it was in unit 10 and it would be developing soon.

Q What did you understand "soon" to mean?

A Within five --

MR. ARKIN: Objection.

THE COURT: Overruled.

Q You may answer, Mrs. Henry.

A Within three to five years.

Q Was there a discussion about any other lots that night that you might purchase?

A There was a discussion on unit 2. That was also a residential lot.

Q Let me just back up for one second. Why did you take two commercial lots?

A Well, one was for the boys --

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Did you buy any other property after that?

A Yes.

Q Do you remember when exactly?

A '70, I think.

Q Did you buy any property before '70?

A At this particular time we should have had land in 13, 10, 11 and then there was land purchased in unit 2.

Q Let me show you what has been marked as Government's Exhibit 123-J for identification and ask you if you recognize it.

A Yes, this is ours.

Q What is it?

A It's a commercial property.

Q It's a contract?

A Yes.

Q What's the date on it?

A May 7, 1969.

Q Does that refresh your recollection about when you bought your next property?

A Yes.

Q It was on May 7th?

A Right.

MR. DEVORKIN: I would offer 123-J, your Honor.

MR. ARKIN: I have no objection to it. It is being offered now?

MR. DEVORKIN: Yes.

XX (Government Exhibit 123-J received in evidence.)

Q Let me show you 123-K for identification and ask you if you recognize this.

A Yes.

Q What is K?

A K is a piece of property that was offered to me by Mrs. Miller, but this was my representative Betty Goff and she had now married Mr. Miller.

Q That was on the same date, May 7, 1969?

A Yes.

Q K is the contract for that property?

A Yes.

MR. DEVORKIN: I would offer 123-K, your Honor.

MR. ARKIN: May I see that, Mr. Devorkin?
We have no objection to this.

XXX (Government's Exhibit 123-K received in evidence.)

Q By the way, Mrs. Henry --

THE COURT: Hold it a second.

This is property in 16 and 13, is that right?

THE WITNESS: Yes, it is.

Q Who was Mr. Miller?

A Mr. Miller was vice president of ATC, that's what Mrs. Miller told me.

Q Would you just describe the circumstances under which you bought the properties referred to in Government's Exhibit 123-J and K?

MR. ARKIN: Objection, your Honor.

THE COURT: I don't know what you mean describe the circumstances.

Q How did you come to buy these properties in these contracts?

MR. ARKIN: Objection.

THE COURT: Overruled.

A We did not buy these at a dinner.

Q How did you buy them?

A These were bought -- Mrs. Miller called me, we had discussed them at a dinner, some property, and then she called me on the phone and she said that she had some property and we were supposed to sign a contract and she came to my house with her husband an a Sunday afternoon and she said she had special property in unit 16 near a

A 440

golf course that she wanted me to have and she thought it would be a wise thing for me to invest in this and I told her I would take it with the understanding when I went to Rio Rancho if I wasn't pleased with it that I could exchange it or I would get my money back and she said all right.

Q What about the properties in unit 11 that you bought on that day also?

A That I got and my husband had to sign the contract

Q What did she say about those, if anything?

A Just that they were commercial property and that we could -- on this particular property we could build a gas station or anything it could be used for so it would have a good investment probability.

Q When you bought this property in unit 16, did you transfer any of your other lots in exchange for those unit 16 lots?

A We had an awful lot of transferring.

Q Just stick with these lots. Did you transfer lots that you already held in unit 13 --

THE COURT: I wish you would refer to exhibit numbers.

Q At the time you bought the unit 16 lots, you already owned lots in unit 13, which are reflected by

Government's Exhibit 123-B, is that correct?

A Correct.

Q Those were four lots?

A Correct.

Q When you bought the lots in unit 16, which appear on Government's Exhibit 123-K, did you transfer any of those unit 13 lots in exchange for these unit 16 lots?

A Yes, we did.

Q Was there any change in the price for the lots?

A Yes, we had to pay more.

THE COURT: What did they transfer? In order to buy the land covered by Exhibit 123-K the witness says that she had to transfer some lots.

What did you transfer?

THE WITNESS: I didn't have to, but I felt I didn't want any more residential so I would like to take the residential that I had and put the money I had already put into Rio Rancho, put it into unit 16 and just own 16 rather than 13 and 16.

THE COURT: All right. Therefore, what did you do?

THE WITNESS: We transferred lots in unit 13 into unit 16 and had a contract for unit 16 and had to add more money.

THE COURT: Doesn't 123-K cover both 16 and 13?

Q Mrs. Henry, you kept two lots in unit 13, didn't you, and transferred two for the unit 16 lots?

A Yes, I did.

MR. DEVORKIN: Your Honor, may I read from portions of 123-J and K?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibits 123-J and K in evidence to the jury.)

Q That made your monthly payments approximately $225?

A Correct; yes.

Q Exclusive of the contract the boys were paying on?

A Yes.

Q What, if anything, were you told at the time you bought these additional lots about the rate of development at Rio Rancho in relation to those lots?

A Mrs. Miller told us that the developing there was growing rapidly. That Singer-Friedan, a commercial company, was developing an industry there and several others she mentioned.

Q Did she say anything with respect to the value of those lots?

A Yes, that if I didn't get them now -- that's why she came to my house -- because if I didn't get them then, in a couple of weeks it was going up.

Q What was going up?

A The price,the purchase price.

Q By the way, at this time did anybody tell you that Rio Rancho was acquiring new property?

A No.

Q Did you ever receive any phone calls after this time from Rio Rancho or AMREP personnel?

A We had been in several phone conversations as to dinners, trips going out.

Q Who called you?

A The New York office and I think I got a couple of calls from Albuquerque, too.

Q Did you ever go to any dinners for property owners?

A Yes.

Q Did you go alone or with anyone?

A Always with someone.

Q Was Mrs. Miller at those dinners?

A At some.

Q Was there anything different about the sales presentation at dinners for property owners than the other dinners?

MR. ARKIN: Your Honor, may we have times and dates?

THE COURT: Yes.

Q How many dinners for property owners did you go to?

A I don't recall separating them. As I said before, eight to ten dinners. After I was a property owner that eliminated me from just the ordinary dinners. Everything from there on in was referred to as property owner dinners.

Q Do you recall the precise dates of those dinners?

A No.

Q How often would you go to them?

A I would say almost once a year.

Q Was there anything different about the sales presentation at the property owner dinners from the regular dinners you have described?

MR. ARKIN: Your Honor, may we have what property owner dinners with respect to what other dinner?

THE COURT: She said she can't give exact dates, but she went to dinners at which only property owners were invited. She is now being asked whether the presentation at those property dinners was different from the description she gave us than the first dinners she went to.

Q Was there any difference?

A The fact that they referred to us as property owners. The fact that being property owners we were told our property had increased in value, and in stating that our investment was growing.

Q Did you or your sons buy any lots at such dinners?

A I don't recall if we bought any more at the dinners or not.

Q Let me show you what has been marked as Government Exhibit 123-L for identification. Do you recognize it?

A Oh, yes, that's right.

Q What is it?

A That's my son's residential property.

Q It is a contract for it?

A Yes, it is.

Q Were you present when this contract was signed?

A Yes.

Q Was that at a property owners dinner?

A Yes.

Q Is that their signature at the bottom?

A Yes, it is.

MR. DEVORKIN: I offer 123-L.

MR. ARKIN: May I see that, please?

MR. DEVORKIN: Yes.

MR. ARKIN: We have no objection, your Honor.

THE COURT: We will have a short recess.

XX (Government's Exhibit 123-L received in evidence.)

(Continued on next page.)

(In open court - jury present)

THE COURT: You may proceed.

MR. DEVORKIN: May I read from a portion of 123-L. This is Government Exhibit 123-L.

It says, Residential at the top, 1.40 acres, I believe. Unit 2, Block 49, Lots 1, C-R, purchase price, $3570, no discount. Down payment, $179. Monthly payment $46. It is dated May 28, 1969 signed John M. Henry and Robert G. Henry.

Q Mrs. Henry, how did you and your husband make the monthly payments on the property that you had purchased as of this date?

A By this time my husband was working two jobs

THE COURT: This is 1969?

THE WITNESS: Yes,it was.

Q Is that where the money came from for these investments?

A Yes, it did.

Q After John and Robert bought these properties did you ever visit the property again?

A Yes, we did.

Q In what year?

A I think '70.

Q Did you visit it in '69?

A Yes, we did.

Q Who went on that visit?

A My husband and I and the boys. Just the boys, my daughter didn't go.

Q What did you do when you got to your property on that occasion?

A Well, when we saw Unit 16 I saw a water tank across the street from my property and I might add this Unit 16 was the same as 13.

Q What do you mean by the same?

A All sand. But it was closer to the developed area but I still didn't want it because of the water tank.

Q What happened?

A I told her I was displeased with it and I didn't want it and she said --

THE COURT: You say she.

THE WITNESS: Mrs. Miller, I am sorry.

THE COURT: And she was acting --

THE WITNESS: I am sorry, your Honor. This was the sales representative at that time.

THE COURT: Do you know the name?

THE WITNESS: Bob Berg I believe was the salesman at that time.

THE COURT: Go ahead.

Q What happened?

A Well, they took us around to see some other property and told us that we were preferred customers because we had purchased so much land and that there was a ranchette in Unit 17 that they thought we would be very pleased with and it could be used for residential -- it was very versatile, it could be used for just about everything and that it was a very special opportunity.

So we felt we had this Unit 16 which I was displeased with and I could not get my money back on it so we thought all right, we will take 17 which we did.

Q Did you see the lots in Unit 17, the ranchettes?

A Yes, we did.

Q Was anything said about those properties when you saw them?

A The first piece of property that I saw had an arroyo on it, which is a gully, and they wanted to sell me that and my exact words "I don't need a miniature Grand Canyon" and I said I would take the next property to it because it had a fairly good view of Albuquerque and of the Siandia Mountains so we took that and where the arroyo was we wouldnot take and my sons had the other side.

Q Another ranchette?

A Yes, we purchased two separate ones, 30 and 32.

Q You use this word arroyo, do you mean arroyo?

A Yes.

Q A-r-r-o-y-o?

A Yes.

Q Were there any utilities in place on your Unit 17 ranchettes?

A Do you mean functioning utilities?

Q Yes.

A The utility that was there was a high power line.

Q Was there anything said to you about utilities on that property?

A Yes, I was disturbed about the high power lines going over the property and they said that when the properties are going to be developed they will not have overhead wiring, that it will be put under ground.

Q Was anything said about when utilities would reach the ranchettes?

A When they were constructing homes or constructing buildings on it.

Q Did they give you any idea when that would be?

THE COURT: I don't even understand that he was talking about utilities. All she says is that the high power lines would go under ground, period.

Q My next question was: Was anything said about when utilities would be in place on Unit 17?

THE COURT: I don't know if she ever asked about it.

MR. DEVORKIN: I am trying to find out about that.

THE COURT: I don't think that question is proper.

Q Were there any conversations at that time between you and the sales representative about utilities in Unit 17 other than these high power lines?

A We talked extensively about the developing of Unit 17 and he said that the roads would be coming in and when road came in that the utilities would be brought in before all the roads so in order to construct buildings on there before they would do any construction that utilities would be in.

Q Did he give you any idea when the utilities would be in those properties?

A He did not specify a day. But from the way things were developing at Rio Rancho and from what I had seen we drew our own conclusions to about ten years.

MR. ARKIN: I move to strike that, your Honor.

THE COURT: You can cross examine on what she saw.

MR. ARKIN: It is not responsive, your Honor.

THE COURT: I think so.

Q Mrs. Henry, were you traveling in your car or Rio Rancho car?

A At this time Rio Rancho car.

Q Was there a radio in the car?

A Yes.

Q What if anything did you hear on the radio as you were traveling?

A We heard on the radio the exact same business procedure of selling lots by saying Unit 13, Lot 2 or 3 hold and I felt that these were other parcels of land being bought up by similar people like myself.

Q That was coming over the radio?

A Yes, all the while we were in the car.

Q I take it you exchanged your Unit 13 and 16 properties for these Unit 17 ranchettes?

A Yes, I did.

Q Showing you Government Exhibit 123-M for identification, do you recognize it?

A Yes, I do.

Q What is it?

A This is the purchase of Unit 17, two lots.

Q Two ranchettes?

A Yes.

Q That is the contract for it?

A That is.

Q Is that your signature on the bottom?

A This is.

MR. DEVORKIN: I offer 123-M.

MR. ARKIN: No objection.

(Government Exhibit 123-M received in evidence)

xxx

THE COURT: What is the date?

MR. DEVORKIN: July 29, 1969.

Reading from Government Exhibit 123-M, the date is July 29, 1969. It says Unit 17, Block 62, Lots 30 and 33, 6.97 acres. Purchase price is $20,190, down payment is $590 or $598. The monthly payments are $207. It says that the property is being transferred in essence for the lots in Units 16 and 17 --

MR. ARKIN: I object to "in essence".

THE COURT: Yes, if you have it there read it.

MR. DEVORKIN: "It is mutually agreed that the buyer in signing this purchase contract relinquishes his right to the property described in his prior contracts Unit 16, Block 13, Lots 25 and 26, Unit 13, Block 10, Lots 30 and 31", and it is signed Martin and Helen Henry.

Q Who made the monthly payments on these ranchettes?

A On the ranchettes, the payments were divided. The boys had a larger parcel of land and their payments were $107 and we had the smaller parcel and ours was $100. So they made the payments to me, both boys would give me equal amounts.

Q What inducements caused you to buy these ranchettes in addition to all of the other property you held?

A I was already involved and I had 13 and 16 which I didn't see much progress going on and I felt if we can exchange them and put them in 17 it would be a wiser investment.

Q Was anything said to you about the investment value of the ranchettes?

A Yes, that this was the wiser investment even over commercial that we had.

Q Were any reasons given for that?

A That it was so versatile and could be used for different purposes.

Q Did you ever go to a dinner in Newburgh, New York?

A Yes, I did.

Q Do you remember when that was?

A I don't recall the exact date. I know it was on a Thursday night.

Q Was that 1970?

A Yes, probably around then.

Q Who was the speaker at that dinner?

A Lenny Geller.

Q What if anything happened at that dinner?

A This was for property owners and there were only a few people. We didn't sit at tables. We sat at one large table and we discussed more property. They told us how our property investments we already had had grown financially, increased in value.

And Mr. Geller suggested I buy a piece of land in Unit 21. I had never seen Unit 21 on the paper, on the original map and I at this point was reluctant to purchase anything more.

Q Did Mr. Geller say what position he held with the company; Or did anybody else tell you what position he held?

A Being he was the speaker of the evening I assumed --

MR. FLEMING: Objection.

THE COURT: Overruled. I gather this is a dinner run by Rio Rancho with the speaker of the evening on selling Rio Rancho Estates.

MR. FLEMING: I understand the question was whether Mr. Geller had said what he was. That is what I understood the question to be.

Q Did anyone ever tell you what position Mr. Geller held with the company?

A No.

Q What did Mr. Geller say after you indicated your reluctance?

A He and I were joshing a great deal at this particular time and he said to me "Now you have just got to get this property, it's a good investment and I won't let you go without you taking it" and I said to him, "No way" and he took me in a side office and there were two other men in there. I don't recall their names.

He said, "I will write up the contract and you can sign this check and I will hold it" because I would not sign the contract. I would not give my okay to purchase that land. I said I would have to go home and think about it. I said that to him merely because I wanted to get out.

We went home and I did not give a final decision on the land.

Q Did you actually sign the contract that night?

A I believe I signed the contract, yes, and a check.

Q How many lots were involved then?

THE COURT: When did you sign the contract and the check?

THE WITNESS: At the dinner. He would hold it and not put it in.

Q How many lots were involved in that contract?

A I really do not recall.

Q Let me show you what is marked as Government's Exhibit 123-M for identification and ask if you recognize those documents?

A Yes.

Q What is it?

A This is the contract that he held for me.

Q Is that your signature there?

A Yes, it is.

Q Were you to receive any kind of discount on this new property?

A I don't recall.

MR. DEVORKIN: I offer 123-M.

MR. ARKIN: We have no objection.

(Government Exhibit 123-M received
x in evidence)

MR. DEVORKIN: 123-M is a contract dated August 5, 1970 for six lots, Lots 36 through 41 in Unit 21, Block 67, purchase price, $9,960, down payment of $495, finance charge of $2,332 for a total payment price of $12,292 and some cents. The monthly payments are $130, signed Martin and Helen Henry.

Q After you signed this contract that night, did you hear from Mr. Geller again?

A Yes, I did. He called me on the phone and asked me if it was all right for him to process the contract.

Q How many times did he call you?

A About three.

Q What did he say when he called on those occasions?

A The first time he asked me if I had decided and I said yes I do not want it and he said maybe you ought to think it over a little longer, I will still hold on to it, it's a good investment, I don't like to see you pass it up.

Q What about the second and third times?

A The second time I still said no and he repeated the statement of the first conversation. The third time he called me we definitely refused it and he accepted our refusal.

Q This contract was eventually cancelled then?

A Cancelled.

Q And the check was never processed?

A Right.

Q You say you went to other dinners besides the dinners you actually bought properties, is that correct?

A Yes.

Q Were those dinners different or the same as the dinners you have already described?

A Basically the same.

Q Does that include the films that you saw and the sales presentation?

A Yes.

Q At these dinners was anything ever said about pending price increases for Rio Rancho lots?

A At each dinner we were informed of the progress of our land was making as far as increasing in value.

Q Was anything ever said about buying before prices went up?

A Yes, that many a times the meetings were held with the understanding that in another month or so the property prices were going higher.

Q Were you actually told that at the meeting?

A Yes, we were.

Q When you were told about Rio Rancho price increases what did you believe that meant in terms of the value of your own property?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A I was very sure that my property was really increasing to this value that they stated.

Q Did you ever fall behind in your payments?

A No, I didn't.

Q Let me show you Government Exhibit 123-F and ask you if you have ever seen that before?

A Yes, I did.

Q Where did you see it before?

A They mailed this letter to me stating I was delinquent in a payment.

Q You weren't delinquent, I take it?

A Right, I was not.

Q Where did the letter come from?

A From Rio Rancho Estates.

MR. DEVORKIN: I offer 123-F.

MR. ARKIN: No objection.

(Government Exhibit 123-F received in evidence)

xxx

MR. DEVORKIN: May I read this letter, Your Honor?

THE COURT: I don't know the relevance of this whole thing. If she was not delinquent and they made a mistake what relevance does that have?

MR. DEVORKIN: I am not offering it for that purpose.

THE COURT: Let me see it before you read it.

MR. DEVORKIN: The last three paragraphs, your Honor.

THE COURT: I don't see why it should come in but if the defendants want to let it in you can read it.

MR. DEVORKIN: I will clarify one thing.

Eventually did you get this problem about delinquency straightened out?

THE WITNESS: Yes, we did.

Q And you didn't have to pay any more money?

A No.

(At this point Mr. Devorkin read Government's Exhibit 123-F in evidence to the jury)

Q Mrs. Henry, with respect to the ranchette property approximately how far away from the developed portion of Rio Rancho Estates was it?

A I can't state definitely. It seemed to me to be about six, seven miles from the business office itself.

Q After you cancelled this contract in Unit 21 or didn't go through with it, did you ever visit Rio Rancho after that?

A Yes, we did.

Q Before you went out there, did you talk with anybody from the company?

A Yes, we did.

Q Who did you talk with?

A We talked to Bob Berg at the Sheraton Hotel in New York.

Q Was this at another dinner?

A No, it was not.

Q What did Mr. Berg say to you at that time?

A We had inquired about putting up a house on the property.

Q For what purpose?

A We felt we better get some investment going out there that would bring in a return because the payments were so high we wanted to try to get this paying for itself in some way.

Q Didyou tell Mr. Berg that?

A Yes.

Q What did he say?

A He offered us some sample homes, some pictures of some developed buildings and suggested that we choose a house and decide to put up a house on one of the lots.

Q When did you actually go out to Rio Rancho then?

A I think it was in September.

Q Of which year?

A '71, I think.

Q What happened when you went out to Rio Rancho on that occasion?

A I was pleased with the way Rio Rancho was developing. It was growing. They had a shopping center. They had a bank. The houses were being built and they were slowly getting to our properties but I was really pleased with it.

We went to the office where we went to inquire about building a home and exchanging one of our outside properties for an in-developea area and I was told I could exchange but it was no half acre I could exchange, they brought it down to a quarter acre and then they told me it would cost me a cople of thousand dollars more to transfer from that property into a developed area so the whole idea of putting a house up went down the drain.

Q What did you say to them after they told you that, if anything?

A I told them it was not a very fair thing to disillusion us the way they had and the man said they could not help it, that was their policy.

Q What happened then?

A We were very discouraged and at that time we decided we are going to go down and see if we can sell this and get a real estate man to handle it in Albuquerque.

Q Had anybody from the company Rio Rancho ever suggested that to you?

A Yes, he said you can always -- well, I had asked him first when they were going to have their resale. Rio Rancho was going to hold a resale on the properties and they said they didn't know anything about this.

Q Did you ask him about the value of your lots?

A Yes, each time we did and they kept saying the lot value is going up and going up so we felt we better see if we can get rid of some of this and we went to a real estate man in the town of Albuquerque on the main road and the man said he would not even handle it for us. He said he could put it on the listings but he had so many that he would not even advise us to do it.

Q What did you do then?

A Well, we just let it go.

end t

Q Did you ever list it for sale?

A No.

Q Up until that time did you know anything about the direction of the growth of Albuquerque or the amount of land in Albuquerque beside what Rio Rancho had told you?

A No, we did not.

Q After you went to that real estate office in Albuquerque, did you continue to make your payments?

A Yes.

Q Why did you do that?

A We had threatened to stop our payments and they told us if you stop your payments, you forfeit your land. We didn't want to lose what we had already invested so we continued to make the payments.

Q Did you ever pay up in full on any of your property?

A We did, yes, on our commercial property in unit 11.

Q When did you do that, do you remember?

A '73, '72, I am not quite sure.

Q Why did you pay up in full?

A Well, we figured we could at least save the interest charges. I would get rid of the payments and we wouldn't be paying interest on it.

Q In other words, you paid up a number of payments all at once to be finished with it?

A Yes.

Q Did you go to other dinners after you did this or after you went out to Albuquerque?

A Yes, we did.

Q For what purpose?

A To see what was happening out there. To see if our land was still going up, if they were still developing and if they were going to have a resale.

Q What were you told at these dinners?

A The same thing as other dinners.

Q What?

A The investment, the progress, the expansion of Albuquerque.

Q Did you buy any more property after that?

A No, we did not.

Q Mrs. Henry, if anybody from Rio Rancho at any of the times of your purchases of Rio Rancho lots had told you there was no resale market for these lots, would you have bought the property?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

Q You can answer the question.

A No, I would not have bought it.

Q If anybody from Rio Rancho had told you that they had in their possession a report by the Albuquerque Planning Commission stating that the growth of Albuquerque was to the northeast and not the northwest, would you have bought your property?

A I would not have.

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

MR. ARKIN: I move to strike the answer.

THE COURT: The answer is stricken.

MR. DEVORKIN: Would your Honor take it subject to connection?

THE COURT: No.

Q If anybody from the company had told you that AMREP had commissioned its own report about the growth of Albuquerque and that report said that Albuquerque's growth was to the northeast --

MR. ARKIN: Objection.

Q -- and would have no effect on Rio Rancho for 15 or 20 years, would you have bought the property?

MR. ARKIN: Objection.

THE COURT: Objection overruled.

A I would not have bought the company.

Q If anybody from the company that is AMREP or Rio Rancho, had told you that they did not expect more than 5 per cent of the Rio Rancho purchasers to ever move to the property, would you have bought the property?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q If you had known that Rio Rancho was going to expand by approximately 37,000 acres, would you have bought your property?

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. DEVORKIN: May I have a moment, your Honor?

(Pause.)

Q Mrs. Henry, showing you -- withdrawn.

MR. DEVORKIN: Can we have this marked 123-Z?

XXX (Government Exhibit 123-Z marked for identification.)

Q Would you take a look at 123-Z for identification and tell us if you recognize it.

A This is my Rio Rancho payment in December.

Q Of what year?

A 1975.

Q Where did you send that check?

A Rio Rancho.

Q Did you send it to New York?

A My husband made this check out.

Q Where did you usually send your checks to?

A I usually sent them to the New York office.

Q That was the practice you followed with all of your checks?

A Yes, when I wrote them out.

MR. DEVORKIN: I will offer 123-Z.

MR. ARKIN: No objection, your Honor.

XX (Government's Exhibit 123-Z received in evidence.)

THE COURT: This is a check for $82. What did that cover?

THE WITNESS: It covered the property on unit 13 and I had the payments reduced on my unit 17. In other words, I was paying $40 a month on my unit 13 and $42 on unit 17.

THE COURT: All right.

Q Mrs. Henry, where did you get this unit 13 property you are referring to from?

A My daughter and her husband had gone to a dinner and they purchased property in unit 13 and they found it a hardship to continue payments and rather than to see them lose what they had put in, the principle amounting to about $900, I got money from a friend of mine who let me borrow the money to pay that and then I put it in our name and we continued to make the payments and had the land transferred to us.

Q These checks that you sent in, did you have an accompanying envelope that the company provided?

A Yes, and I usually put my account number on the back or the front.

Q Was the envelope addressed to Rio Rancho Estates care of the Chemical Bank in New York?

A Yes.

Q Did you use one of those envelopes for this check, Government's Exhibit 123-Z?

A I really wouldn't know. My husband sent that in. I do not know what he put on.

Q Was it the regular practice to use those envelopes?

A It was my practice.

MR. DEVORKIN: No further questions.

THE COURT: You may cross examine.

MR. ARKIN: Mr. Devorkin, may we have your exhibits?

MR. DEVORKIN: Certainly.

XXX

CROSS EXAMINATION

BY MR. ARKIN:

Q I am Stanley Arkin, one of defense counsel, Mrs. Henry.

You testified you visited in Albuquerque in 1963?

A Yes, we did.

Q Was that you and your husband?

A And my children.

Q You took along your three children also?

A Yes.

Q Did you drive out there?

A We went on a tenting trip.

Q A camping trip?

A Yes.

Q You had a camper with you?

A A tent.

Q Did you camp somewhere near Albuquerque?

A I think we drove through Albuquerque.

Q About how long did you stay in Albuquerque?

A Just for lunch and gas up.

Q You didn't drive around there?

A Not going out of our way too much, no.

Q You testified that you had gotten a favorable impression of Albuquerque, isn't that so?

A In '63?

Q Yes, ma'am.

A I don't recall saying it was that favorable in '63.

Q When you went to your first dinner party in 1968, didn't you tell Miss Goff that you were interested in Albuquerque because you had been there in 1963?

A Yes.

Q So you must have had a favorable impression of Albuquerque, didn't you?

A Not necessarily.

Q You were just interested in it, it wasn't favorable?

A Right.

Q Do you recall driving when you were in Albuquerque on Coors Boulevard?

MR. DEVORKIN: On which trip is this, your Honor?

Q In 1963 I am talking about.

A I don't pay attention to roads, just route numbers.

Q Do you recall what route numbers you took through Albuquerque?

A Yes, 66.

Q Straight through 66?

A Right.

Q You cross the Rio Grande?

A Yes.

Q You saw the land on the other side of the Rio Grande?

A Yes.

Q You also went through Albuquerque and saw the city?

A Yes.

Q You didn't return to that city until 1968, is that correct?

A Yes.

Q Bu the way, in 1968 your daughter was 24, you said?

A Yes.

Q I take it by then she had been through college, isn't that so?

A No, not completely.

Q She was still in college?

A Yes.

Q Your other son was 21?

A He was not 21 -- I don't think he was 21 yet because of his birthday. He was 20.

Q Was he in college at that time?

A Yes.

Q Where was he going to school?

A South Lancaster, Atlantic Union College.

Q That is a college up in Massachusetts?

A Right.

Q By the way, you own your own home?

A Yes.

Q Where is that again, New City?

A Yes.

Q When did you buy that home?

A We didn't buy it.

Q Did somebody buy it for you?

A No.

Q Did you inherit it?

A No.

Q Well then, tell me how you got it?

A You said did we buy it. We didn't buy it, we built it from scratch.

MR. ARKIN: It reminds me of the story of the three little pigs.

MR. DEVORKIN: Your Honor, I object to that.

Q You say you built it from scratch. You bought the land?

A My dad owned the land.

Q And so he gave you a piece of the land?

A He let us build on it and we were paying him small payments until we had the land paid for.

Q But you did buy it from him?

A Eventually.

Q How much did you pay him for that piece of land?

A $550.

Q How large a piece of land is it?

A About an acre.

Q When did you buy it from your dad?

A Pardon?

A When did you receive that piece of land from your dad?

A 1950.

Q Do you have any idea what that acre is worth today?

A Yes, I do.

Q What is it worth today?

A About $20,000.

Q Now, you also say you built your house from scratch?

A Yes.

Q You must have paid for the materials to build your house, isn't that so?

A No, it was on consignment.

Q Somehow you got the material to build your house, isn't that so?

A Yes.

Q That must have cost you something, didn't it?

A Eventually.

Q Meaning you paid for it?

A Yes.

Q How much did you pay for those materials which you used to build your house?

A About $8,000.

Q You built your house in 1950?

A Started it.

Q It was completed in what year?

A '51.

Q How much would you say that house is worth today?

A That I would say it is worth?

Q If you have any knowledge of how much you think it is worth today, yes.

A About 65.

THE COURT: That is without the land?

THE WITNESS: With the land.

THE COURT: The house and land would be $65,000.

MR. ARKIN: Thank you very much, your Honor.

Q $65,000 is what you are talking about?

A Yes.

Q Not $6500?

A I am sorry. Did I say "hundred"?

MR. ARKIN: It is all right.

Q You say in 1968 you went to a dinner party, is that correct, the first dinner party?

A Yes.

Q You received a notice in the mail for that?

A I did.

Q At that time you say you attended together with your sons, correct, because your husband was ill?

A No, he was working.

Q Didn't you testify on direct examination that he was ill?

A Yes.

Q That you later recollected he was not ill but rather he was working?

A No, he has continued to work even though he was ill.

Q He was ill at that time then?

A Yes, he was.

Q So he didn't attend that dinner party?

A It was a Sunday dinner party and he was on his job and did not come to the party because it was in an afternoon and his work day started from Sunday until Friday.

Q He was also ill at that time, too, is that right?

A Yes, he was.

Q He had a heart condition?

A Right.

Q He had had his heart condition from what date, do you recall that?

A 1960, I believe, or '59 that he had his first heart attack.

Q Do you recall at that dinner party that you signed an agreement to purchase land, is that correct?

A Yes.

Q You signed it right there?

A Yes.

Q You made a down payment at that point, too?

A Yes.

Q You signed a check at that point?

A Yes.

Q Did you talk to your husband about it afterwards?

A Yes.

Q Did your husband sign the agreement?

A Yes.

Q When did he sign it?

A I don't really recall.

Q Let me show you Government Exhibit 123-B, which is the purchase agreement for that date.

A Yes.

Q Is that your husband's signature in the lower right-hand corner?

A Yes, it is.

Q He wasn't at the dinner party that night, was he?

A No.

Q So he must have signed it somewhat later, mustn't he?

A He must have.

Q You must have taken it home with you, isn't that so?

A I don't recall.

Q If he wasn't at the dinner party, he must have signed it somewhere else, do you agree with that?

A Definitely.

Q Do you have any recollection of where he might have signed it?

A He must have signed it at home.

Q So you were permitted to take the agreement home and your husband signed it at home, is that right?

A I really don't know because he signed it.

Q But he did not sign it that evening, you agree with that?

A Yes.

MR. ARKIN: Would you please mark this as defendants' exhibit.

xxx (Defendant Howard Friedman and Henry Hoffman Exhibit E marked for identification)

Q Are you able to identify this?

A Yes.

Q What is it?

A It is a Rio Rancho Estates check.

Q Are you able to identify the signature in the lower right-hand corner?

A That is my husband's.

Q Your husband's signature. The date of the check is?

A May 8th.

Q 196 --

A '8.

MR. ARKIN: I offer this in evidence.

MR. DEVORKIN: Your Honor, I have no objection to it but I think for the record Mr. Arkin should state when he uses documents such as this where he has obtained them from.

THE COURT: He is offering it. If you want to object, object. If not, it comes in.

MR. DEVORKIN: I am not objecting to its admissibility.

THE COURT: All right.

MR. ARKIN: Mr. Devorkin, would you like to look at this document.

MR. FLEMING: I object to Mr. Devorkin's statement.

THE COURT: He has a document in his hand which the witness identified and it is there, that is all. Where he got it from is immaterial.

THE WITNESS: I also ask.

MR. ARKIN: Excuse me, ma'am, let me ask the question.

(Defendant Howard Friedman and Henry Hoffman Exhibit E received in evidence)

Q I show you Exhibit E for identification, which is a check which I just spoke about --

THE COURT: It is in, not for identification.

MR. ARKIN: Excuse me, your HOnor.

Q This is your husband's signature?

A Yes, it is.

Q It is dated May 8, 1968?

A Yes.

Q You just said this check was signed at the dinner party which you attended?

A I signed a check at the dinner party.

Q Do you recall signing or having your husband sign another check for $887 on the same day or the next day?

A I don't recall.

THE COURT: What was the amount of the check that you claim you signed?

THE WITNESS: $887, the exact same amount.

Q You have no way of accounting for this check signed by your husband then, is that correct?

A No, I don't.

Q When you were at that dinner party and you signed a contract, you read what you signed, didn't you?

A Hastily.

Q But you read it?

A Yes.

Q You considered what you were doing to be a serious transaction, didn't you?

A Yes.

Q And you were investing a large sum of money to you, isn't that so?

A Right.

Q You don't consider yourself an imprudent person, do you?

A No.

Q So you read the agreement?

A Yes.

Q And when you read the agreement you saw in that agreement that you had a privilege absolutely to get every penny back if on visiting Albuquerque or Rio Rancho Estates within six months you didn't like it, isn't that so?

A Yes.

Q You knew about that?

A Yes.

Q You were told that at the dinner party, too, weren't you?

A Yes.

Q You were told that by the speakers?

A Yes.

Q You were told that by the land consultants?

A Yes.

Q You were also told that you had a right to exchange a half acre lot at the time you wished to build and move to Rio Rancho into a lot which had utilities, isn't that so?

A Yes.

Q So that you never were under the impression that the lot you were buying at that time had utilities in it already, isn't that so?

A Yes.

Q You knew that?

A Yes.

Q It was at that same dinner party that you were told about insurance which you could obtain on the life of your husband to protect you in the event something happened to him in respect to that land, isn't that so?

A I don't recall.

Q Don't you remember being told that if your husband were to die unfortunately and if you paid a certain amount down that the land would be yours free and clear?

A At this particular time, I do not recall that, no.

Q Do you recall that dinner party pretty vividly?

A Parts.

Q Before you came here today, were you asked by anybody from the prosecution staff like Mr. Devorkin or Ms. Hynes to bring with you all the papers you had relating to Rio Rancho?

A I brought them this morning.

Q You did bring them?

A Yes.

Q Among those papers were there certain notes in your own handwriting?

A There was a note, two particular notations that I had made.

Q And this morning when you gave those papers to Mr. Devorkin those two particular notations were among them, weren't they?

A Yes.

Q This afternoon during the luncheon recess you reviewed those papers again, isn't that so?

A Yes.

Q You took out those two papers?

A Yes.

Q And you put them into a trash basket?

A Yes. Might I state my husband took it out -

MR. ARKIN: Your Honor, I have no question at the present time. I will in just a moment.

Please mark this for identification.

(Defendant Howard Friedman and Henry Hoffman Exhibit F marked for identification)

xxx

MR. ARKIN: One crumbled piece of paper with handwriting upon it.

Q Are you able to identify Defendant's F for identification, ma'am?

A Yes, that is mine.

Q Is that the piece of paper which you brought this morning and threw away during the luncheon recess?

A Yes, it is.

Q Is this your handwriting on the reverse side of that paper?

A Yes.

MR. ARKIN: I offer F in evidence.

MR. DEVORKIN: No objection.

Q Are you able to read to me and the jury what your sentence is over here, referring to the lower left-hand corner of this paper?

A Yes. This was a notation to myself to tell Mr. --

Q Please read it, ma'am.

A Yes. To tell Mr. Devorkin, do not ask me what dinner because it is hard for me -- don't ask what dinner, hard to remember each and I didn't finish, each year one is happening.

(Defendant Howard Friedman and Henry Hoffman Exhibit F received in evidence)

Q Before you came down here -- by the way, when did you write that note?

A This weekend.

Q It was after you spoke to Mr. Devorkin?

A Yes.

Q You spoke to Mr. Devorkin when for the first time?

A About two weeks ago, three weeks. I am not sure.

Q This weekend you wrote that note?

A To myself.

Q Because you were unable to remember vividly what took place at particular dinner parties, isn't that right?

A No, I cannot remember dates well.

Q Do you recall what your note just said?

A Yes.

Q You were able to remember particular dinner parties, isn't that right?

A You are only taking part of that note.

Q I am asking you if that is what your note said.

A My note said I don't remember what happened at some -- the years, the dates of the dinners.

MR. DEVORKIN: Why don't we just show the jury the note.

MR. ARKIN: If your Honor please, I can make my own presentation. If Mr. Devorkin wants to redirect, that is up to him.

Let me mark a one-page thermofax as G for identification. It has on it the Code No. 28-B.

(Defendant Howard Friedman and Henry Hoffman Exhibit G marked for identification) xxx

Q I show you Exhibit G for identification. Are you able to identify the signatures in the lower right-hand corner of that page?

A Yes.

Q Whose signatures are they?

A My husband and myself.

Q Do you recollect seeing this piece of paper?

A Yes.

Q Do you know what it is?

A Yes, it's a receipt of my down payment.

Q What else is it, if anything, if you know?

A A contract.

Q Which you signed?

A Yes.

MR. ARKIN: I offer G in evidence.

MR. DEVORKIN: May I see it?

MR. ARKIN: ABsolutely.

MR. DEVORKIN: This is part of another document, isn't it, Mr. Arkin?

MR. ARKIN: It is a rider, if you please, your Honor, to the Government's Exhibit 123 some part of the alphabet which was not annexed to their exhibit.

MR. DEVORKIN: If it is properly connected to which document it is part of, I have no objection.

MR. ARKIN: I have no problem with annexing it to the government document if they wish.

THE COURT: That is what he is asking you to do.

MR. ARKIN: Fine, I will be happy to do it.

THE COURT: Good, do it.

MR. ARKIN: That would be the first contract. That would have been 123-B, your Honor.

THE COURT: All right.

MR. ARKIN: I should withdraw my proffer and consider it annexed to Exhibit 123-B.

THE COURT: It is Exhibit G which is a rider to 123-B.

MR. ARKIN: Okay, thank you very much.

May I read that, your Honor?

THE COURT: Let him see it.

xxxx (Defendant Henry Hoffman and Howard Friedman Exhibit G received in evidence)

end t

Q Mrs. Henry, at the time, that is in May 1968, when you signed this agreement your husband had had a heart attack sometime previous, hadn't he?

A Right.

MR. ARKIN: If your Honor please, may I read a portion of this to the jury?

THE COURT: Yes.

MR. ARKIN: Rider attached to and made part of reservation and purchase agreement No. 1318028390231. Seller acknowledges that the buyer had paid to it upon this date the sum of $887 which sum represents at least fifteen percent of the total purchase price under the agreement.

The designated buyer named below hereby represents that he is less than sixty years of age and to the best of his knowledge in good health on the date herein.

In consideration of such payment and such representation seller and buyer agree that in the event of the designated buyer's death at a time when buyer is not in default hereunder and upon the furnishing to the company within thirty days of the death of proof of such death seller shall deliver a fully paid warrantee deed to the estate of the deceased desigated buyer free and clear of encumberance.

At the bottom appears the signatures of Martin Henry and Helen Henry.

Q At the time that you signed that agreement representing that your husband was in good health, he had a heart condition, didn't he?

A Yes, he did.

Q Mrs. Henry, do you also recall receiving a travel allowance to go to Albuquerque at that dinner party?

A No, I did not get a travel allowance at that time. You are speaking of the first dinner?

Q Speaking of the first dinner.

A No.

Q Did you get a travel allowance before you got to Albuquerque in September 1968?

A No.

MR. ARKIN: Would you mark this for identification, a one-page document entitled Rider to be attached to contract 1318028393031.

(Defendant Howard Friedman and Henry Hoffman Exhibit H marked for identification)

xxx

Q I show you Exhibit H for identification and ask if you are able to identify that.

A Yes.

Q Was this a rider to the original contract you signed in May 1968?

A No.

Q What is it then?

A This was telling me that I would have a $200 --

MR. DEVORKIN: I object.

THE COURT: Don't read it.

A It is a $200 travel allowance.

THE COURT: You are being asked do you recognize the document.

THE WITNESS: Yes.

THE COURT: When did you see it?

Q When did you first see this document?

A I remember seeing it at Rio Rancho Estates.

Q That was in September 1968?

A That was the day I was out there.

Q But you did see it when you were out there?

A Yes.

Q And you acknowledged you saw this particular document?

A I can't truthfully say I do remember this particular document. The only thing I can remember is a

$200 written travel allowance deduction from Rio Rancho and a yellow slip of paper and I have it.

Q Was that received in connection with the original agreement to purchase in May 1968?

A Yes.

MR. ARKIN: I offer Exhibit H in evidence.

MR. DEVORKIN: I object.

THE COURT: Why?

MR. DEVORKIN: It is unsigned and it is not properly identified.

THE COURT: She said she saw it. What more identification do you want?

MR. DEVORKIN: She didn't say she saw this document.

THE COURT: She saw a credit for $200 when she went to Rio Rancho Estates on her first visit which is 1968.

MR. DEVORKIN: I don't know what purpose this particular document is admissible for, your Honor.

THE COURT: Did you receive a $200 allowance on the purchase price of the property you bought the first time?

THE WITNESS: I was given a credit, no money.

THE COURT: It is the same thing, isn't it?

THE WITNESS: It is only applicable to the last payment.

THE COURT: So she received a credit of $200 for going out there.

MR. DEVORKIN: Then I have no objection.

THE COURT: All right.

MR. ARKIN: Thank you very much, your Honor.

(Defendant Howard Friedman and Henry Hoffman Exhibit H received in evidence)

Q At the time that you were at that dinner party you say you saw West Side Story, a movie?

A I believe it was West Side Story. It was a movie I saw.

Q That movie had in it pictures of the Siandia Mountains?

A Yes.

Q When you got to Albuquerque later that year, did the pictures in the West Side Story compare with the Siandia Mountains as you actually saw them?

A Yes, it did.

Q Did West Side Story also tell you about the climate out at Albuquerque?

A Yes.

Q Did that motion picture adequately or accurately describe the climate in Albuquerque?

A It described it. It described the climate.

Q Did you find the climate in Albuquerque favorable?

A Yes, I did.

Q Did you also see the university in Albuquerque?

A Yes.

Q The same one pictured in West Side Story?

A Yes.

Q Did you see the bridges from Albuquerque to the West Side?

A I crossed them.

Q The same ones in the West Side Story?

A Yes.

Q And you also saw that same entrance to Rio Rancho which was pictured in the West Side Story?

A Yes.

Q With its landscaping?

A Beautiful.

Q And the pool?

A Beautiful.

Q And the clubhouse?

A Yes.

Q All those things which were in the picture were there, weren't they?

A Yes.

Q Real?

A Yes.

Q Before you went out to Albuquerque in September 1968 you had expressed an interest in purchasing more land?

A Restate that please.

Q Didn't you before you went out to Albuquerque in 1968 and after you had bought your lots in May 1968 expressed an interst in buying more land when you were out in Albuquerque?

A Did I go out there for the purpose of buying more land?

Q Did you express an interest?

A Not really. Not until I got there.

Q Didn't you ever tell anybody that at all?

A I don't recall.

Q Do you ever recall talking about your proposed trip to Albuquerque with Miss Goff?

A Yes, many times I talked to Miss Goff about Albuquerque.

Q Is Miss Goff, the soon to be Mrs. Miller you spoke to her about going to Albuquerque?

A Yes.

Q Did you ask her whether you wanted arrangements to be made?

A She asked me and I told her no.

Q You said you would make your own arrangements?

A I said we will take a camping trip out.

Q You actually went out there by yourself?

A Yes.

THE COURT: Alone?

THE WITNESS: No.

THE COURT: She didn't go by herself.

THE WITNESS: With my family.

Q Yourself, your husband and children?

A Yes.

Q In a camper?

A Tenting.

Q You didn't go out there on a company-arranged tour?

A No.

Q Did you take your parents?

A Not this time.

Q It was just you and your husband and children?

A We made so many trips, let me think. No, I think the first time we went out was with my parents and the children.

Q How long did you stay out there?

A We were enroute to California. I don't recall the amount of days, maybe just overnight or two nights. I don't really recall.

Q Did you camp there?

A Yes, we did.

Q On Rio Rancho?

A No, down in town.

Q There is a camping site there?

A Yes.

Q You drove from town to Rio Rancho?

A We did.

Q Do you recall which route you took to get from town to Rio Rancho?

A No.

Q Do you recall how long it took to get there?

A About twenty minutes.

Q When you got out to Rio Rancho were you shown your own property?

A Yes.

Q You stodd upon it?

A Yes.

Q And you looked around it?

A Yes.

Q And you were able to see the Siandia Mountains from that property?

A Yes.

Q And you were able to see all the other property around your piece of property?

A I sure could.

Q At that time you also saw Albuquerque again, didn't you?

A Yes.

THE COURT: You mean while she was standing on the top?

Q At the time you were in Albuquerque in 1968 you saw the town again, didn't you?

A Yes.

Q Did you notice a change in the town from 1960 to 1968?

A Yes.

Q It had grown considerably, hadn't it?

A Yes.

Q A lot more buildings, homes?

A Right.

Q Expanded roadways?

A Yes.

Q Factories?

A Yes.

Q Banks?

A Yes, I did.

THE COURT: It is 5:00 o'clock. This is a good time to stop. We will start tomorrow at 10:00 o'clock.

(Jury left the courtroom)

THE COURT: I would request counsel and defendants not to leave the courtroom for about five minutes after the jury leaves because it is too easy mingling of jurors, counsel and defendants unless the jury is allowed to get down the elevators first.

Secondly, for the record, I listened to the tapes that Mr. Glendon objected to on the grounds that they were inaudible. I don't have the numbers. What are they?

MR. DEVORKIN: The transcript numbers are 672 and 674, Government Exhibits.

THE COURT: Those are the two you are objecting to and they were perfectly audible.

MR. GLENDON: I think it was not my objection.

THE COURT: What was your objection?

MR. GLENDON: I don't recall.

MS. CROSS: It is my objection.

MR. DEVORKIN: It was Ms. Thompson conveying it.

THE COURT: Who was the objectant?

MS. CROSS: It was ours on behalf of all the defendants, your Honor.

THE COURT: It was perfectly audible. I found a couple of words missing from the transcript but that is all. It is a perfectly audible tape. They must have given you a busted down recorder. They gave me a good one.

MR. DEVORKIN: Your Honor, you used the same recorder that the defendants did.

MR. FLEMING: What I would like is a direction to the government not speak to any witness in the midst of cross examination.

THE COURT: The government understand that, don't you?

MR. KAUFMAN: Yes, we are already following that.

MR. FLEMING: The second question, your Honor, really an inquiry, I had understood your Honor to rule pretrial that omissions, failure to disclose certain facts or alleged facts would not be material.

THE COURT: Several designated ones, not all of them.

MR. FLEMING: That, your Honor, answers my question. Fine.

THE COURT: Just the designated one.

MR. FLEMING: I understand.

MR. KAUFMAN: Your Honor, I have one very brief matter.

With respect to the tapes the government anticipates offering we have had trouble with at least one of them in terms of breakage. They are old tapes and one of them was broken during the times we have been playing them for the defendants. We have taken the precaution of sending the tapes down to the FBI laboratory in Washington to have exact copies made of the tapes and we will have the FBI technician who does that certify that the copies are exact copies.

THE COURT: They have the transcript of it.

MR. KAUFMAN: The only reason I am bringing it up is we have asked the defendants whether or not they will stipulate to the certified copies of the originals or whether they will insist that the FBI technician come to New York to testify as to what he did.

They have indicated they will not so

stipulate or at least they want to think about it.

THE COURT: What is the answer?

MR. ARKIN: I didn't indicate I would not stipulate. I indicated I wanted to check with the people who heard the tapes recently so I can make an intelligent response.

THE COURT: All you have to do is hear the new tapes against the transcripts.

MR. ARKIN: I wanted to ask my people whether they had done that before I responded.

MR. KAUFMAN: Just in case we have to bring the technician in, your Honor, that is the only reason I brought it up.

THE COURT: If the tape ties in with the transcript they will have no objection. If it does not tie in with the transcript, then you did something to the tapes which should not have been done, not deliberately.

What else?

MR. ARKIN: One minor matter, your Honor.

With respect to the material, the 3500 material on Howard Mandel at page 48 lines 8, 9 and 10 and 11 appear certain items of information which we believe should not be allowed to be adduced on direct examination.

May I hand that up to your Honor?

THE COURT: Yes.

That is page 48 lines 7 through 14?

MR. ARKIN: I believe so, your Honor, yes.

THE COURT: I don't think that is properly adduceable on direct and I do not think they would waste their time. If they would they should not do it.

MR. ARKIN: Thank you very much.

MS. HYNES: I have one brief application.

Mr. Arkin mentioned in his opening statement to the jury that he would be calling experts and that he would be offering reports of experts and I would ask Mr. Arkin to turn over those reports to the government.

THE COURT: Mr. Arkin?

MR. ARKIN: If your Honor please, in my opening statement I said I would be offering the statements and opinions of experts. However, I have not reduced those to reports.

THE COURT: You should. You are going to put an expert on the stand. He should have a report with his name, his address has to be turned over and any report he has written. If he has not written anything you state he has not written any report.

MR. ARKIN: At present, I have no report containing any kind of conclusions from any of my experts.

I do have experts, there is no question about that.

THE COURT: Have you designated their names to the government?

MR. ARKIN: None of them were New York people and so we weren't required to. In other words, when your Honor asked us for a witness list we said we would be happy --

THE COURT: Mr. Arkin, if you are going to put any witnesses on the stand who you are going to qualify as experts, give their names and addresses, I don't care where they come from, to the government.

If you have in your possession any reports that these experts have given,you turn those over. If you don't have them say so but the day after you receive such reports you turn them over.

MR. ARKIN: Yes, sir, I will do that. I will designate the names and addresses tomorrow morning for Ms. Hynes.

THE COURT: Anything else?

Any objections?

I gather we have now heard two count witnesses. However, I don't see any testimony tying in Count 1, which is the mailing.

MR. KAUFMAN: Your Honor, the mailing

qjw

proof comes in as a company produced document. It is a computer printout that says date of last payment and it has the date on there.

Those documents will all come in when we offer in bulk the company produced documents.

THE COURT: All right. You have indicated to defendants the witnesses to be called tomorrow.

Are there any disputes as to the exhibits in those files? I am not going through what I went through this morning. I fugred after two weeks of pretrying this those things had been taken care of and absent any specific objection I am going to let them in. I am not going to go through this again.

MS. CROSS: We have not had any designation of what exhibits are coming in with these witnesses.

THE COURT: Give them the designation now.

MR. DEVORKIN: These are not count witnesses.

THE COURT: I don't care what it is. I won't go through what I went through this morning. They are entitled to know the exhibits you are putting in tomorrow so if they have any objection I want to know it and most likely I will overrule it simply because they didn't make it timely. I want to know what it is.

MS. THOMPSON: May we move the table outside for tomorrow so we can get to the exhibits more easily?

THE COURT: The trouble is I hope to be out of here tomorrow.

MS. THOMPSON: I will renew the application tomorrow.

THE COURT: The trial is still going on and the jury has been out since Friday afternoon. For one more day you don't mind leaving it there, do you?

MS. THOMPSON: It depends how many exhibits they propose to put in tomorrow.

THE COURT: Work it out with them right now.

(Trial adjourned to November 9, 1976 at 10:00 o'clock a.m.)

end take
end day

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Berit Hampe	142	212	248	251
Helen Henry	252	319		

EXHIBIT INDEX

Government	Identification	In Evidence
167-G		153
167-A	161	
1230B		267
123-I		281
123-J,123-K		285
123-L		293
123-M		300,305
123-F		308
123-Z	316	317
Defendant Chester Carity and Daniel Friedman		
A		215
B	228	230
C	230	231
D	243	244
E	328	
Defendant Howard Friedman and Henry Hoffman		
F	334	335
G	336	338
H	340	343

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP Corporation,et al

November 9, 1976
10:00 A.M.

(Trial resumed)

(Not in open court - jury not present - Ms. Thompson present and Mr. Devorkin)

MR. DEVORKIN: Yesterday afternoon, I believe --

MS. THOMPSON: After court on November 8th.

MR. DEVORKIN: The defendants were supplied 3500 material for Peter Saknich.

3511-A, grand jury testimony.

3511-B, an interview report from the Federal Trade Commission, dated October 19, 1973.

3511-C, affidavit of Peter Saknich before the Federal Trade Commission, dated August 25, 1975.

The defendants already had copies of Mr. Saknich's FTC testimony.

MS. THOMPSON: Correct.

MR. DEVORKIN: In addition to that, this

morning they were supplied 3510-C, the reader file of Howard Mandel.

MS. THOMPSON: It is called general correspondence from 8/69 through 10/31.

(In the robing room)

THE COURT: What is your problem?

MR. ARKIN: It is not a problem. I just wanted to reflect that I am giving to Ms. Hynes a list of our proposed defense experts and I have one, of course, for the Court and to say that while there are no expert reports aside from the ones turned over in connection with Mr. Yguado and I believe Mr. Flatto and there are retainer agreements which I have with various of these experts which I don't deem to be reports, Mr. Marcou, George Marcou of Washington, D.C. who is a planning expert, members of his staff have prepared preliminary internal memoranda addressed to him, which he may or may not use in preparing any report which he is going to prepare for me.

When that report is prepared I will give it to Ms. Hynes immediately but I wanted to advise the Court of that.

THE COURT: All right.

MR. ARKIN: Thank you very much.

MS. HYNES: Your Honor, there is one item that we might take care of now.

I have distributed stipulations pursuant to your Honor's requests regarding the portions of the SEC testimony that the government will read to the jury.

I believe that defense counsel do not wish to stipulate to these portions, but since they have been ruled upon would agree to have the government read it to the jury. I wonder if we should take care of that now.

MS. CROSS: My only suggestion was because there are certain parts which we did not agree to stipulate to but your Honor overruled us, I didn't want to waive our objection that we had made earlier.

There was also one part of it which Ms. Hynes provided to us which was never ruled on. We objected to it in our informal conferences and it was never brought up by the government to the Court and it is in the stipulation and I believe Ms. Hynes wants to address herself to that.

THE COURT: What portion is that?

MS. HYNES: This is a very brief portion that describes the officers of AMREP. It would take probably five minutes to read and it is a description that appears in all of the SEC reports and I can give your Honor the stipulation where it appears.

THE COURT: Let me read it.

MS. CROSS: Your Honor, we objected to this part when we discussed it with the government on the grounds it would be covered by the table which the government was going to make up of the positions of the various defendants.

To the extent that it is not covered by the table it goes into matters prior to this entire case.

MS. HYNES: Your Honor, it would not cover all of the items of the table. Really the table would be illustrative of this. This is more readily understandable for the jury and -- it is composed of seven paragraphs and would take no more than five minutes to read and it is more understandable.

THE COURT: It is not the question of how long it takes to read. The question is whether it is admissible. If it takes thirty seconds and it is inadmissibl it would be out.

MS. HYNES: I agree. It is admissible for the same reasons that your Honor ruled were admissible in the other SEC reports.

THE COURT: I won't have it cumulative. It is not going in five times, it is only going in once, all right.

MS. HYNES: Your Honor, we will not have it be cumulative.

THE COURT: All right, you can read this.

MS. CROSS: I object particularly to the paragraph on Chester Carity and Henry Hoffman on the bottom of page 2 which discusses what they have done prior to coming to AMREP.

THE COURT: That is right, that won't be in.
That would be out.

MR. FLEMING: It would begin, your Honor, "Since 1959".

THE COURT: Chester Carity and Henry Hoffman since 1959, strike out the word "they", have devoted a major portion of their time --

What else?

The rest seems to be --

MS. CROSS: The only other reference to that which may be confusing to the jury is in the Howard Friedman paragraph.

"During the aforesaid periods he was associated with Messrs. Carity and Hoffman in their various activities."

I am not sure what that relates to.

THE COURT: During the aforesaid period, the aforesaid period starts in '61, doesn't it?

MS. CROSS: I guess so.

MR. GLENDON: I think the one with Mr. Friend should terminate, your HOnor. He no longer has the office that is indicated there.

MS. HYNES: It is indicated as of when this appeared on the report and at pretrial Mr. Weidner agreed to have that portion read on behalf of Mr. Friend.

THE COURT: You will have to give the date, as of September 28, 1971, on the first page of the stipulation.

It would not be a stipulation. You can read it to the jury. Their objection has been noted for the record I assume someplace along the line.

MS. CROSS: Yes, it has.

MS. HYNES: Should we proceed without having a stipulation with respect to any of these documents and simply read it to the jury?

THE COURT: Yes, and they would not. Whatever portions they object to I gather is already on the record.

MS. CROSS: You asked us to go over the exhibits that the government intends to introduce through Howard Mandel today.

There are a number of them to which we have no objection and I would be happy to put them on the record.

THE COURT: If you have no objection, just don't object when it is offered outside.

MS. CROSS: Let me find my list.

There are some, we will obviously object to them subject to connection. Some seem more easily connectable to Mr. Mandel than others.

THE COURT: Who is Mr. Mandel?

MS. CROSS: He worked for the company -- I am not sure whether he began -- until about 1970.

MR. DEVORKIN: A former vice-president.

THE COURT: Okay. What is your problem?

MS. CROSS: We have a problem with connection, particular problem on connection on some of them. There were a couple that we asked the government last night if they intended to introduce them with paper clips attached. They have a xerox of a document with a paper clip and I don't know what the government's --

MR. DEVORKIN: I am taking care of your objections along those lines.

THE COURT: All right.

MS. CROSS: Exhibit 347-F which -- I am sorry, THE COURT: Is is the customer's handwriting?

MR. DEVORKIN: I believe it is, your Honor. I can offer it at this time without the writing and cover the writing up if your Honor wishes.

THE COURT: Yes.

MS. CROSS: Exhibit 854 in the upper corner of it in pencil is written "FTC." I believe this document was gotten from the FTC by the government.

THE COURT: Strike out the FTC.

MR. DEVORKIN: I believe your Honor actually has ruled 854 out already. I checked my notes and I think that's correct.

THE COURT: I don't have my index here, it is on the bench. If you say it is out, it is out.

How does Ms. Cross get it unless you are offering it again? I thought you gave her last night the exhibits that you were going to use today. Did you give her 854?

MR. DEVORKIN: I went back and checked last night --

THE COURT: So you are withdrawing 854, all right.

MR. DEVORKIN: Yes.

MS. CROSS: On the Larry Klingman memos which

they indicated they would offer today. On Exhibit No. 20 it purports to be a memo from Larry Klingman to Chester Carity of March 12, 1973 where he is suggesting that they take aerial photographs of Rio Rancho on different anniversary dates to show the growth and development of Rio Rancho. As I understand it this proposal by Mr. Klingman was never put into effect.

It is, therefore, irrelevant.

MS. HYNES: Your Honor, we will ourselves be introducing aerial photographs and I ask your Honor, we would identify it as a business record. We will not offer it into evidence at this time. At a later time in the trial we will ask your Honor to rule on it. If your Honor finds it is relevant --

THE COURT: You mean this document?

MS. HYNES: Yes, your Honor.

THE COURT: It is inadmissible.

MS. HYNES: It is a business record of Mr. Klingman.

THE COURT: It is inadmissible as irrelevant. The fact it is a business record doesn't make it admissibl I thought we have been over this for four months.

MS. HYNES: My suggestion was, your Honor, that we would offer it at a later time when your Honor might give the evidence and the testimony belief that it was relevant.

THE COURT: At that time if you wish to renew it, I will entertain it. Right now it is not in.

MS. HYNES: Can we qualify it as a business record?

THE COURT: No, we will worry about it when you bring it in.

MS. HYNES: We will have to call Mr. Klingman to the stand again then.

THE COURT: You will have to worry about that. You are not going to bring it before the jury if I exclude it ultimately.

MS. CROSS: There is one question, the theory on which the government is going to attempt the Klingman documents. Is that on a business record theory or some other theory?

MS. HYNES: It depends on which document.

THE COURT: You were supposed to have your objections. Now you have given me two, 346D and 20. What else do you have?

MS. CROSS: Subject to connection with Mr. Klingman, those are the objections on Mr. Klingman's documents.

THE COURT: What do you mean?

MS. CROSS: If Mr. Klingman cannot qualify it as a business record, we would object to it as being admitted as a business record. I don't know if Mr. Klingman can qualify any of these as business records. Some of them don't look like business records, but that is --

THE COURT: In other words, you can't make your objection yet until Mr. Klingman takes the stand?

MS. CROSS: Yes.

THE COURT: I gather that is the same regarding Mr. Mandel?

MS. CROSS: Exactly on the authentication.

THE COURT: All right, with that understanding let's go on.

MR. FLEMING: Your Honor, there are a series of documents in the Mandel documents, 358 through 363 which are of a kind and I object to them because I think they are irrelevant, your Honor. There is only one page, I think you have to read the first page. They are letters to different officers.

THE COURT: From Carity -- who is handling Mande

MR. DEVORKIN: I am.

THE COURT: What is the relevance of this docume

MR. DEVORKIN: Your Honor, 358 through 363 are representative of the kinds of monthly reports and letters that the company sent out to its owned and operated brokers throughout the United States reviewing their sales progress, giving them instructions as to what they should do or what they were doing poorly or giving them motivations or pep talks to do better.

The monthly reports were sent to other officers of the company by Mr. Mandel and Mr. Carity, who were in charge of sales. They were sent, for example, on this one and most of them to Dan Friedman and Howard Friedman. Mr. Mandel had discussions with them about these monthly reports, about the success of the sales dinners, about the success of particular offices, about the progress or lack of progress of particular offices.

THE COURT: I think they come in.

MR. FLEMING: My point is they prove nothing with regard to the charge in this case. They are simply a businessman writing --

THE COURT: It is how they look after their people to see that they do a good job. That doesn't keep it out.

MS. CROSS: The government told us this morning of three more exhibits that they hope to introduce through

Mr. Mandel and let me show them to Mr. Fleming. They are 315, 316 and 317.

MR. DEVORKIN: Your Honor, these exhibits are scripts that Mr. Mandel had a part in writing which were approved by AMREP and at least one or two of the defendants and those scripts are the scripts for sales presentations that were used throughout the United States and they were sent to brokers throughout the United States for their use.

MR. FLEMING: I assume, your Honor, that what Ms. Cross had said with regard to the Klingman documents goes with regard to all of them. If the witness fails to connect, then we have an objection in court. I can't make that objection now because I don't know what the testimony will be.

THE COURT: All right, fair enough.

MR. GLENDON: Will there be an indication of the dates of those scripts?

MR. DEVORKIN: Yes. It is on the date and the witness will give testimony.

MR. FLEMING: Will there be any indication as to where they were used?

MR. DEVORKIN: They were used everywhere.

The man will testify where the scripts were used.

MR. FLEMING: The script used up in Portland, Connecticut --

MR. DEVORKIN: You can wait and hear the testimony, Mr. Fleming.

THE COURT: Whether it was used in Portland, Connecticut or not, it was a part of the scheme that they were used.

MR. FLEMING: We referred to this the other day, Judge, they introduced a script that was used in Seattle, Washington, and they have no witness from Seattle, Washington, who said they were misled or deceived or anything else. I think there has to be some matching up of time and place and person and sales technique.

THE COURT: Sales technique, if they testify this is what was used where the people who claim they were defrauded, but if you have something that's used only in Washington and no place else and there nobody from Washington, that has to be stricken.

MR. DEVORKIN: That's not the situation in this case.

THE COURT: I assume they will tie it up.

MR. DEVORKIN: The other point I want to make is obviously the government doesn't have to produce a purchaser from each of the places the company sold this property to prove that --

THE COURT: No, but each person you do produce has to have been subject to this type of representation or presentation.

MR. DEVORKIN: I agree.

THE COURT: I gather you are representing to the defendants that is exactly what you are going to do.

MR. DEVORKIN: Exactly.

MR. ARKIN: I just wanted to add one thing which is that a number of the scripts that the government has in its possession are not necessarily ones which were used. They were drafts and they went through several drafts and to say that any one script was used throughout the country

THE COURT: You are arguing before you ever hear the witness.

MR. FLEMING: That's really the problem. We are just saying there may be objections we will have as we hear the testimony.

THE COURT: Obviously.

MR. ARKIN: Okay.

(Continued on next page.)

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(In open court - jury present.)

XXX HELEN HENRY, resumed.

THE COURT: You may proceed.

XXX CROSS EXAMINATION (Continued)

BY MR. ARKIN:

Q Mrs. Henry, aside from your two sons, did you also suggest to any other relatives that they purchase land at Rio Rancho?

A My daughter.

Q Anybody else?

A I spoke favorably to other people.

Q Who were they?

A Just --

Q You can't remember their names?

A They were not people that I knew, just strangers at the dinners.

Q In that 1963 trip that you took across the country in your camper did you go through the southwest, that is California, Arizona?

A Yes, I did.

Q In addition to going through New Mexico?

A Yes.

Q Do you own any land in the southwest other than at Rio Rancho?

A No, I do not.

Q I am going to show you Government Exhibit 123-B which is the first contract for land purchase dated May 7, 1968 and ask you if in the lower portion of the first page of that agreement your initials appear? Are those your initials?

A Those, Helen Henry.

Q And that follows a sentence which reads, "We acknowledge receipt of a copy of the restrictive covenants and the public report offering statement of prospectus applicable to the law," is that correct?

A Right.

Q Yesterday we were talking about the reason you were interested in Rio Rancho and I asked you whether you had testified earlier in the day that you were interested because of your health and your husband's health and your desire to relocate in the southwest. Do you remember that?

A Yes, I do.

Q Do you remember what you said to me when I was examining you?

MR. DEVORKIN: Objection as to form.

THE COURT: I don't know what you mean.

Q Do you recall what your response was as to the question as to what I asked you earlier in the day?

A I said earlier in the day that I was interested in the southwest because of my health.

Q When you went out to Rio Rancho in September, 1968, you went in your own camper, isn't that so?

A In a tent, yes.

Q And you drove about in your own automobile, I take it?

A We did.

Q You were not in any kind of company-guided tours?

THE COURT: When she went to Rio Rancho?

MR. ARKIN: Yes, sir.

THE COURT: I gather she said she was taken in a company car to the site.

Q When you drove from Albuquerque to Rio Rancho you went in your own car, didn't you?

A Yes, we did.

Q And when you left Rio Rancho you left in your own car?

A We did.

Q You came and went as you pleased?

A Yes.

Q When you were there did you sign any form with respect to your visit?

A Yes, I did.

MR. ARKIN: Would you mark this for identification.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit I marked for identification.)

MR. ARKIN: It's a one-page document entitled record of property visitation.

Q Do you recognize this document, Mrs. Henry?

A Yes, I do.

Q Do you recognize on this document your husband's signature?

A Yes.

MR. ARKIN: I offer I in evidence.

MR. DEVORKIN: No objection.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit I received in evidence.)

MR. ARKIN: I will read one line. Document entitled record of property visitation reads towards the middle, "I have inspected my property and am satisfied with the home site I have purchased."Comments, nothing appears, and it is signed Martin Henry.

Q You know your husband signed that, don't you?

A Yes, I do.

Q And you said earlier yesterday that you were disappointed when you saw your property, is that right?

A That's right.

Q And you saw this piece of paper which has space for comments on it, isn't that right?

A Yes.

Q And no comments are there, you agree to that?

A I agree to that.

Q It says, "I am satisfied, Martin Henry"?

A Yes, that's what he said.

Q You disagree with your husband?

A He was dissatisfied too. If he didn't make a report that was his business not mine.

Q Is he a kind of man who would sign something which he didn't believe?

A I can't say what he would do.

Q Is your husband an imprudent man?

A I can't say what he would do.

Q You believe he is an honest man?

A I do.

Q And he wouldn't sign something in which he would not believe, would he?

A No.

Q You knew, by the way, when you were out there in Albuquerque in 1968 in your first visit that if you were not satisfied and if you told that to the company you had an absolute right to get every penny back?

A Yes.

Q But you didn't get any money back, did you?

A No.

Q Because you didn't ask for any money back, isn't that right?

THE COURT: You have two questions there.

MR. ARKIN: I thought she answered the first one.

A Repeat it, please.

Q You knew when you were in Albuquerque in 1968, in September, that you had absolute contractual rights to get every penny back if you were not satisfied, is that not a fact?

A I was not offered my money back when I showed that I was dissatisfied.

Q Would you please answer my question? Did you know what your rights were when you were in Albuquerque in September, 1968?

A I did.

Q And you knew that from the contract and from what the speakers told you at the dinner party?

A Yes, I did.

Q And from what Miss Goff told you?

A I did.

Q And when you were in Albuquerque did you seek to exercise that right to get your money back?

A I displayed extreme displeasure in my land and I did say about getting my money back.

MR. ARKIN: Would you please answer?

MR. DEVORKIN: She did answer.

THE COURT: He asked did she ask for her money back and I haven't heard an answer to the question.

MR. DEVORKIN: She said she did.

THE COURT: I didn't hear that. Did you ask for your money back?

THE WITNESS: I said I was dissatisfied and I would like to get out of this whole deal. I did not say in essence I want my money back.

Q And yet your husband signed that he was satisfied and you knew he did, is that your testimony?

A This is after we had been in the car with the salesman.

Q Would you please answer my questions? Just answer my questions.

Yet your husband, Mr. Henry, signed this form, Exhibit I, saying that he was satisfied and you knew he did that?

A Yes.

Q When you were out in Albuquerque in 1968, did you observe any difference in Albuquerque as a city between 1968 and 1963?

A I did.

Q Did you observe that it had grown?

A Yes.

Q There were more roadways?

A Yes.

Q More buildings?

A Yes.

Q And more people?

A Yes.

Q When you were at the property, Rio Rancho, do you recall whether or not the Panorama Inn Motel was there?

A Yes.

Q Was it there then?

A At the first visit?

Q Yes, ma'am.

A I can't recall right now.

Q Do you know what Corralis Heights is?

A Yes.

Q Was that there in the first visit, 1968?

A No, it was not.

Q What about the shopping center, was that there in 1968?

A No.

Q What about the golf course, was that there?

A No.

Q In 1969, May 4, 1969, you made another purchase, didn't you?

A Yes.

Q Do you recall what it was your purchased?

A Commercial property, I believe.

Q That was in unit 10?

A Yes.

Q And you purchased two lots?

A Yes.

Q And you purchased them in trust for your sons?

A Yes.

Q And that's despite the fact that you were very disappointed and wanted to get out of the whole thing less than a year earlier, is that so?

A It's so.

Q At that time do you recall initialing a portion of that agreement which provided and which specified that you acknowledged the receipt of copies of a property report and a report filed with the office of the Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, do you recall initialing and acknowledging receipt of those reports?

A I did.

Q Were you aware that if you had not received those reports that you had an absolute contractual right to cancel the agreement which you had signed?

A No, I did not.

Q Did you read the agreement which you signed that evening?

A Not very well.

(Continued on next page.)

Q Do you know if your husband read it?

A We both skimmed over it. We didn't read it as carefully as we should.

Q You have worked hard your whole life as has your husband for the money which you have earned, isn't that so?

A Yes.

Q And you consider this to be a very serious transaction?

A Yes.

Q And you were trying to plan for the future, am I right?

A You are right.

Q And you know enough to know that when you sign a contract that is a very serious thing to do, am I correct in that?

A I should have.

Q Do you know that?

A I do now.

Q You didn't know it then?

A I was very negligent at that time. I should not have been.

Q You were negligent because you didn't read what you signed?

A Right.

Q You just signed blindly?

A Not all of it but the part I should have read I did not.

Q You only read parts which you should not have read?

A Apparently.

Q Do you recall how you selected which parts of the agreement you read and which you didn't read?

A Yes, the ones that were -- whatever my eyes fell on. I didn't select any part.

Q If I were to say to you that the agreement, the first page of the agreement contains, say, four paragraphs, would you agree you read at least those four paragraphs?

A I don't remember. I don't recall what paragraphs I read.

Q Would you have read the paragraphs next to which you put your initials?

MR. DEVORKIN: Objection. He should show her the document.

THE COURT: Overruled.

Q Would you have read the paragraphs next to which you put your initials?

A I really can't state what paragraph because, as I say, the document when it was given to me I briefly scanned it and I initialed it. I had faith that whatever they were giving me was for my benefit.

Q And you didn't take the time to carefully read a one-page document of this size?

A No, I did not.

Q On May 7th you engaged in another transaction. Do you recall that, May 7, 1969?

A Yes, I do.

Q Do you recall what that transaction was?

A I believe that was another purchase of property.

Q Do you recall what purchase it was, ma'am?

A I think it was Unit 11. It was commercial property.

Q Do you recall whether or not that had to do with Unit 13 being traded up into Unit 16, would that refresh your recollection?

A No, I believe I purchased Unit 11 before I purchased Unit 16. They were both done the same day.

Q I see. So on the same day, May 7, 1969 you purchased something in Unit 11?

A Yes.

Q And what you purchased in Unit 11 were two lots, is that correct?

A Yes.

Q Referring to Exhibit 123-J, Government Exhibit 123-J, let me ask you if towards the middle of that page you are able to identify your initials?

A Yes.

Q And that is next to the statement which says that you acknowledge receipt of a U.S. Department of Housing and Urban Development Report and other public reports, is that correct?

A Yes.

Q And did your husband sign this?

A Yes,he did.

Q Do you recall the occasion on which you signed this particular agreement referring to 123-J?

A I believe it was a Sunday afternoon when Mrs. Miller came to my home.

Q Was that your home?

A I believe it was.

Q In --

A When we got Unit 16 also.

Q That same day you agreed to purchase for $7680 a piece of land in Unit 11, that you do remember, don't you?

A I do remember the 11, yes.

Q Did you read the agreement on that date?

A Yes, I did.

Q By then you were reading things more closely, is that correct?

A Yes.

Q And the agreement I take it was no different than the previous agreement you signed the year before, was it?

A Right.

Q And you signed that agreement despite the fact you said you were very disappointed when you went out to Rio Rancho the year before, isn't that right?

A Yes.

Q And that same day as disappointed as you were you also purchased some other property?

A Yes.

Q And that was in Unit 16?

A I purchased that.

Q Did you purchase that other property in Unit 16? That is the question.

A With reservations.

Q Let me show you Government Exhibit 123-K.

Do you recognize this document?

A Yes, I do.

Q What is that document?

A It's a purchase agreement.

Q Whose signature appears at the bottom of that purchase agreement?

A My husband and mine.

Q That is your signature?

A Yes, it is.

Q And you signed it?

A Yes, I did.

Q Is there anywhere on this agreement where you expressed your reservations, ma'am?

A No, I did not. I don't mean reservations of my purchase.

Q I am just asking you a question. There is no place on here where you wrote that?

A No.

Q At the time that you signed this particular agreement did you also initial next to the paragraph that you had received certain reports?

A Yes, I did.

Q This particular agreement was for something like $10,000, do you recall that?

A Yes.

Q Did you consider that serious enough to read this entire agreement?

A At this time I was talking to Mrs. Goff.

Q I am asking did you read this agreement before you signed it?

A Yes.

Q Did your husband read it before he signed it?

A Yes.

Q Do you recall whether that agreement, the one I just showed you, 123-K with respect to Units 16 and 13 involved any trading of land you previously purchased?

A Yes, it did.

Q Do you recall what land you traded to get the land which is referred to in this particular agreement, that is referring to 123-K?

A That is what I meant with reservation. We traded 13 into 16 and if I was satisfied upon visit I could continue to keep it and she gave me an extension on keeping it.

Q Thank you very much.

When you traded 13, by the time you were trading 13 into 16, I take it that the property in Unit 13 was selling for more, wasn't it?

A They were asking their purchasers more money.

Q It was selling for more money, isn't that so, yes or no?

MR. DEVORKIN: Asked and answered.

THE COURT: It is not. She said they were asking. That does not mean it was sold, does it, Mr. Devorkin?

MR. DEVORKIN: I think Mr. Arkin is saying were they selling for more money, what price were they selling, was it higher?

MR. ARKIN: I know what I am asking, your Honor.

THE COURT: His question is in order.

Q I will rephrase the question so we have no difficulties as to what I am asking.

Mrs. Henry, do you know that the land which you purchased in 1968 was priced higher in 1969?

A Yes, I do.

Q And do you know that when you traded the land which you purchased in 1968 in order to purchase land in Unit 16 that you got full credit for the increase in the price during the course of that year?

A Unit 16 had also gone up so it was even.

Q Do you know that, yes or no?

A Yes.

Q And do you know that you got in terms of appreciation on your prior property, the property which you owned from 1968, a credit of over $1300?

A Yes.

Q You remember that one, don't you?

A Yes.

Q Now on May 28, 1969, just a few weeks later, your sons purchased some land, didn't they?

A Yes.

Q That was in Unit 2?

A Yes.

Q And that was your son who by then was 21 or 22?

A Yes.

Q And the other boy was 16?

A Yes.

Q And he was being guided by you, I take it, the younger one?

A Yes.

Q And you encouraged him to take his money which he earned from mowing lawns into buying lands which you say you were disappointed with? Yes or no, ma'am?

A No.

Q You told him not to do it?

A Yes.

Q And yet he at age 16 did it without your consent?

A He and his brother were going together on this.

Q I am asking you about your 16 year old son. Did your 16 year old son agree to spend the money which he earned from mowing laws and buying land without your consent? Yes or no?

A I did not give him a yes or no answer. I left the judgment up to him.

t2b

T3A am

EOjw 1 Henry - cross

Q At age 16?

A I did.

Q Are you testifying here that you advised him not to buy that land?

A No, I did not advise him one way or the other. I left the choice up to him.

Q Did youtell him how disappointed you had been the year before?

A No.

Q You know, don't you, that your son had been there?

A Oh, yes.

Q And he had seen it?

A Yes.

Q And the older boy had seen it, too?

A Yes.

Q Do you consider your older boy to be a prudent, sensible fellow?

A Yes.

Q Somebody who is able to make his own decisions?

A Yes.

Q He wanted to buy that land?

A May I clarify this?

Q I am asking questions. I want you to answer my questions, ma'am.

A Would you please restate that again.

Q I said your older boy had been there, is that right?

A Yes.

Q You consider him to be a prudent, sensible fellow?

A Yes.

Q He made up his own mind to buy that land?

MR. DEVORKIN: Your Honor, I don't think she can give a yes or no answer to that.

THE COURT: She was present.

MR. DEVORKIN: She is testifying about what was in her son's mind.

THE COURT: Obviously she knows if she made any recommendations one way or the other.

MR. DEVORKIN: I agree with that.

THE COURT: That is the question he is asking.

Repeat the question.

(Record read)

A Yes.

Q Mrs. Henry, you said just a few moments ago that you had spoken favorably to people --

A Yes.

Q -- about buying the land, is that right?

A Yes.

Q You had spoken favorably to them at dinner parties?

A Yes.

Q You attended dinner parties from 1968 up through what year, 1973?

A Maybe '74.

Q Maybe up to 1974?

A Yes.

Q You are not going to tell us here, are you, that if you were so severely disappointed in what you had seen that you would tell other folks favorable things about Rio Rancho, is that going to be your testimony here?

A I would like to clarify your--

Q I would like you to answer my question.

MR. DEVORKIN: That kind of question deserves an ability to explain, your Honor.

THE COURT: You can do whatever you think is necessary on redirect. He is entitled to ask his question and get an answer to it.

MR. DEVORKIN: I am just saying that some questions don't lend themselves to yes or no answers.

THE COURT: The objection is overruled.

A I recommended Rio Rancho's climate and living to the people.

Q You didn't tell those people whom you spoke favorably about Rio Rancho to that you had been severely disappointed, did you?

A I was not disappointed in the living and the climate of Rio Rancho. I was disappointed in an investment of Rio Rancho.

Q You knew that those people who were at dinner parties with you were there potentially to buy land, didn't you?

A Yes.

Q You consider yourself an honest woman, don't you?

A I do. I try.

Q You told them favorable things about Rio Rancho, didn't you?

A Yes.

Q You didn't tell them unfavorable things, did you?

A I didn't mention the investment.

Q You didn't mention unfavorable things, is that correct?

A That is correct.

Q Nobody told you what to say at those parties, did they?

A They did not.

Q You went out to Rio Rancho again in July of 1969. Do you remember that?

A Yes, I do.

Q That was on July 29th of 1969?

A Probably.

Q Who accompanied you on that trip?

A My son and my husband and I, the boys, both.

Q You recall that you got vacation travel allowances at that particular time, too?

A Yes, I did.

Q The company gave you those allowances in return for your traveling out there and seeing Rio Rancho?

A They said they would apply them to my last payment.

Q To your knowledge they did, didn't they?

A I haven't made the last payment yet.

Q But you know you have a contractual right to have it applied to your last payment, don't you?

A Yes, I do.

Q That vacation travel allowance was given to you so that you could see the very land that you had purchased, isn't that so?

A Yes.

MR. ARKIN: May I please have this marked as J. This is a one-page document entitled "Record of Property Visitation" and appears to be dated 7/28/69.

(Defendant Howard Friedman and Henry Hoffman Exhibit J marked for identification)

Q Are you able to recognize Exhibit J, ma'am?

A Yes.

Q Is that your husband's signature?

A Yes,it is.

Q This is a document which he signed when you were out at Rio Rancho?

A Yes.

MR. ARKIN: I offer J in evidence.

MR. DEVORKIN: May I see it?

MR. ARKIN: Certainly.

MR. DEVORKIN: Your Honor, I would like a brief voir dire on this document.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. DEVORKIN:

Q Mrs. Henry, would you look at all the handwritte items on that document and tell us whether you recognize any of them at all.

A I recognize my husband's signature.

Q Is there anything else that you recognize as being on there when he signed the document?

A This was when --

Q Just yes or no.

A Yes.

Q Do you recognize anything else on that document as being written in there when he signed the document -- withdrawn.

Were you present when he signed the document?

A No. I was present, I wasn't watching him sign.

Q Did you look at this document before he signed it?

A Apparently not.

Q Do you remember whether you looked at it before he signed it?

A I cannot recall.

Q Do you recall whether any of this other writing besides your husband's signature was on there at the time you saw the document?

A No.

MR. DEVORKIN: I object to its admission except for the signature and the printed items.

THE COURT: Let me see it.

(Pause)

THE COURT: I gather you are offering this solely as to the two sentences, I have inspected my property and I am satisfied.

MR. ARKIN: That is correct. Those come directly out of the microfiche that we provided the government.

THE COURT: That doesn't make any difference, but if you are offering this for that, the objection is overruled.

MR. ARKIN: Thank you, your Honor.

MR. DEVORKIN: I don't object as to those two.

THE COURT: That is what he is offering it for obviously.

MR. DEVORKIN: I object to the other writings on the document being offered.

THE COURT: There are a lot of hieroglyphics as far as purchase price and payments and what not which are not in issue here.

(Defendant Howard Friedman and Henry

xx Hoffman Exhibit J received in evidence)

XXX

BY MR. ARKIN:

Q Mrs. Henry, you know that your husband signed this record of property visitation report in July of 1969 saying he was satisfied with the property, isn't that so?

A I guess he did. It is signed.

Q You don't believe that he signed it without believing it, do you?

A No.

Q When you were out at Rio Rancho -- excuse me, let me go back a little bit.

How did you get out to Rio Rancho that second visit?

A By car.

Q You drove across-country?

A Yes.

Q Tent this time?

A No, our son was going to the University of New Mexico.

Q That is your oldest son?

A The youngest.

Q The youngest went out there and so you just drove out in the car?

A To bring some more things to him and to go to

Rio Rancho.

Q Where did you stay when you were out there?

A Camp Brown.

Q How long were you out in New Mexico that time?

A We were in and out of New Mexico for a couple of weeks. We went to California.

Q You drive about New Mexico during that period of time?

A Yes, I did.

Q Did you see Sante Fe?

A Yes.

Q You saw the Greater Albuquerque area?

A I did.

Q And you made your own travel arrangements and hotel arrangements, didn't you?

A We didn't go in a hotel.

Q Camping arrangements then.

A Yes.

Q I take it they have public camping grounds around Albuquerque?

A They always have.

Q When you were out there this time you decided to exchange certain property you had into other property, do you remember that?

A I believe at that time we split the 17 and put it in the boys' names.

Q Do you remember taking the property in 16 near the water tower --

A Yes.

Q -- and putting that into the ranchette in 17?

A Yes.

Q You did that because you said you didn't like the water tower?

A Right.

Q It wasn't very pretty seeing a water tower over there?

A No, it wasn't.

Q Let me ask: At the time that you saw your property in 16 and you did see your particular property in 16, didn't you?

THE COURT: I didn't hear you.

Q Did you see your particular piece of property in Unit 16?

A Not before this.

Q This time when you were there.

A Yes.

Q How far was it from the water tower?

A It seemed to me as though it was almost across the street.

Q Was your piece of property in Unit 16 near other homes in Unit 16?

A There was nothing in Unit 16 that I can recall.

Q No homes at all in Unit 16?

A I don't know where the boundary lines end again.

Q Did you see any development near your lot in Unit 16?

A No.

Q About how far was your lot in Unit 16 from, say, the developed portion of Rio Rancho, do you remember?

A No, I do not. We did a lot of driving around.

Q It was pretty close, though, wasn't it?

THE COURT: What was pretty close?

Q That her lot in Unit 16 was pretty close to the then developed area in Rio Rancho.

A I don't recall.

Q When you were out there on this second visit did you observe any difference in Rio Rancho from the year before?

A Yes, I did.

Q There was more building, wasn't there?

A There was more building. It was in the same units.

Q What units was the building going on in?

A I don't recall, but I asked them if they were going to be -- what unit they were going in.

Q Do you know what units they were? You mentioned units, do you know which units?

A Not offhand, the was the one near the business office.

Q Were you able to see Albuquerque from your lot in Unit 16?

A No.

Q You decided to take that lot and move to a lot further out, is that correct?

THE COURT: Further out from what?

Q Further out from the developed area.

MR. ARKIN: Excuse me, your Honor, you are quite right.

Q Did you make a decision at that time after seeing your lot in Unit 16 to take that lot and change it in and get land further away from the developed area?

A I didn't feel 17 was further away. It was closer to a highway.

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Q Was it further away from the building area?

A It didn't seem to me that it was.

MR. ARKIN: May I have that map?

(Pause.)

MR. ARKIN: Bear with me for just a few seconds, your Honor, and we will have that.

Q I am going to show you a map, Mrs. Henry, which is Defendant's Exhibit A. Have you ever seen this map before?

A No, not this particular map.

Q Have you seen one like it?

A No.

Q Maybe in a smaller version?

A Perhaps.

Q Do you agree that unit 16 appears at the lower right-hand corner of the property?

A Yes.

Q And that unit 17 is at the upper right-hand corner of the property?

A Yes.

Q And that the developed area of Rio Rancho as of the date of this map was in the lower right-hand corner of the property?

A Yes.

MR. DEVORKIN: I object.

Q Nearer to unit 16?

MR. DEVORKIN: I object to that question.

THE COURT: Why?

MR. DEVORKIN: May we have a side bar?

THE COURT: She says yes.

MR. DEVORKIN: I think it is an important point.

THE COURT: Overruled. The witness has no problem with the question.

MR. DEVORKIN: Can we have the date of the map, your Honor?

MR. ARKIN: If your Honor please, I observe no date on the map. It was admitted in evidence yesterday.

THE COURT: It wasn't admitted in evidence for the purpose for which you are now using it.

MR. DEVORKIN: That's the point of my objection, your Honor.

MR. ARKIN: Well, then, if your Honor please, this is cross examination and may I ask if this refreshes her recollection as to the location of things?

THE COURT: You may ask her that.

MR. ARKIN: All right.

Q Mrs. Henry, does this map refresh your recollection as to the location of unit 17 being in the upper right-hand corner?

A I was aware of 17 all the time.

Q Being in the upper right-hand corner of the property?

A Next to the state road or near the state road.

Q You are aware that unit 16 was in the lower right-hand corner, isn't that so?

A Not really.

Q Didn't you know that unit 16 was near and included part of the developed area?

A When you ride around in the sand you don't really know where you are.

Q Mrs. Henry, I take it -- excuse me -- how many times before you came down here yesterday were you prepared for questioning by Mr. Devorkin or Ms. Hynes?

A I only spoke to Ms. Hynes on the telephone trying to get a date.

Q Did you speak to Mr. Devorkin before you came down here?

A .Yes.

Q How many times did you speak to Mr. Devorkin?

A I don't know. Briefly once or twice.

Q In his office?

A Once.

Q For how long?

A I have no idea. About an hour or two.

Q Did he tell you to mention sand?

A No, he did not.

Q Ma'am, you drove throughout the entire southwest of this country. Did you see sand in Texas?

A But I didn't own it.

Q Did you see sand in Texas?

A Yes.

Q Did you see sand in Arizona?

A Yes.

Q Did you see sand in California?

A Yes.

Q You saw sand in New Mexico?

A Yes.

Q What you call sand, that kind of soil you also saw great cities, didn't you?

A Yes.

Q You saw rivers flowing through that sand?

MR. DEVORKIN: Which sand?

A Not particularly.

THE COURT: Which sand?

Q The sand in the southwest, Judge.

A The Rio Grande was dried up.

Q Did you see the Colorado River?

MR. DEVORKIN: What does the Colorado River have to do with New Mexico?

THE COURT: Sustained.

Q Were you aware, Mrs. Henry, that when you took your land in unit 16 and traded it in for land in unit 17 that you were intentionally taking land further away from the building area at Rio Rancho? Yes or no.

A No.

MR. FLEMING: I didn't hear that answer, your Honor.

THE COURT: No.

THE WITNESS: No.

THE COURT: N-o.

Q Did you ever see any maps at all of Rio Rancho?

A I saw a large scale map of the original land that you had purchased.

Q Did you ever see any smaller maps?

A Just the maps that I had received with my land purchase of the small square.

Q Did those maps have designated on them particular units?

A Just my unit and my lot.

Q No other units were designated?

A Not to my recollection. I wasn't interested truthfully that much in the other ones.

Q You weren't really interested in the relationship and location between the land you owned and the land which had buildings on it, is that so?

A A ranchette was not to be in an area where homes were located. I was told this property was to be used for commercial or for residential and that is why it interested me.

Q Were you interested, Mrs. Henry, in where your land was in relation to the land which was already developed Yes or no.

A Not particularly.

Q All right. Would it interest you to know that as recently as September 28, 1976 that an acre of land in unit 16 was sold for $8,000?

MR. DEVORKIN: I object.

THE COURT: Sustained.

Q Do you know that as recently as September 28, 1976 an acre of land in unit 16 sold for $8,000?

MR. DEVORKIN: I object.

THE COURT: Sustained.

Q You went out to your property in unit 17 on your second trip and you saw one which had an arroyo on it and you didn't like it?

A Right.

Q Then I take it they showed you some other property which you did like?

A Yes.

Q They had a view of the Siandia's?

A Yes.

Q A view of Albuquerque?

A Yes.

Q That's a particular piece of property which pleased you and that's what you wanted?

A Yes.

Q I take it that the view of Albuquerque and the view of the Siandia's and the beauty of that land induced you to buy that land, am I correct?

A I considered it to be a better investment.

Q Are you saying that the beauty and the view and so forth did not influence you?

A That's why I felt it would be a better investment.

Q All the beauty and the views all had to do with investment in your mind?

A Yes.

Q That was in your mind?

A Yes.

Q I take it that that piece of land had some sand on it, too, didn't it?

A Yes. It was rolling hills.

Q I take it you would also agree, as you said during your direct examination yesterday, that nobody told you that there would be any particular time at which the property in unit 17 which you had would be developed, am I correct in that?

MR. DEVORKIN: I object to form when he characterizes the previous testimony.

THE COURT: Reframe your question.

MR. ARKIN: Fine, your Honor.

Q Nobody told you there would be any particular kind of development in unit 17 at any particular time, did they?

A Yes.

Q They told you a particular time?

A Not a specified year, no.

Q Don't you consider a specified year a particular time?

THE COURT: She said they did not specify a year.

MR. ARKIN: She said yes in response to my question, your Honor.

A To a specific time, they said that in unit 2, specifically, that my boys were advised to take --

Q I am asking you about unit 17.

THE COURT: When you bought unit 17, did they give you any idea of the time when it would be developed?

Q Particular time?

A Yes, they said it would be developed very soon.

Q Have you been following the progress of unit 17?

A I have been following the progress of all of Rio Rancho as best I can.

Q You have some idea of where things are now in Rio Rancho, don't you?

A I did back in '75, '74, when we were out last.

Q But not since then?

A No.

Q You say you have been following the progress as best you can. Do you know that unit 17 now has piped water, electricity and telephones?

MR. DEVORKIN: I object.

THE COURT: Overruled.

A No.

Q You don't know that?

MR. DEVORKIN: Can we have an instruction on the question, though?

The question itself is not evidence as to the facts contained in it.

THE COURT: That's true. They will have to tie that up with proof.

Q Do you know that there are homes being built in unit 17 this very day?

A No, I did not.

Q That there was one home that was being built at the cost of $60,900, do you know that?

A I did not.

Q Another one at a cost of $57,910?

A I did not.

Q And that 4.9 acres was recently sold there for $23,200?

MR. DEVORKIN: I object, your Honor.

THE COURT: Sustained.

Q In May of 1970, you made up your mind, didn't you, that you might move out to Rio Rancho?

A I wanted to use that property for building a home as an investment. I couldn't move out yet.

Q You had no intention of moving there?

A Not that particular time.

Q Do you recall what steps you took in order to start the process of building a home out in Rio Rancho?

A Yes.

Q What did you do?

A We were contacted, I believe, on the phone and I talked to Bob Berg. We went to the Sheraton Hotel and talked to Bob Berg, looked over house models and then that year we went out to Albuquerque.

Q Did you put a binder on a house?

A It seems to me we did.

Q Do you know what a binder is?

A Yes.

Q What is it?

A It's a payment to hold for plans for a home to be built.

Q I take it when you put a binder on a home that means you have a serious intention of building one, do you agree with that?

A Yes.

MR. ARKIN: May we mark this as Defendant's Exhibit K. It is a check, dated May 20, 1970, drawn on the account of Helen Henry and Martin Henry, 173 Strawtown Road, New City, New York.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit K marked for identification.)

Q I show you Defendant's K for identification, a check. Are you able to identify that check?

A It is my check.

MR. ARKIN: I offer this in evidence, K in evidence.

MR. DEVORKIN: May I see it, Mr. Arkin?

MR. ARKIN: Yes.

MR. DEVORKIN: No objection.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit K received in evidence.)

Q The purpose of this check was for you to start the ball rolling to get a house built for you out in Rio Rancho, isn't that so?

A For an investment.

Q The house was an investment, too. You never intended to move there, is that right?

A Not at that particular time.

(Continued on next page.)

MR. ARKIN: Would you please mark this as L. It's a brochure of 35 pages entitled 45 model home plans.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit L marked for identification.)

Q Do you recognize this document?

A Yes, I do.

Q Is that the very document you brought to court here yesterday?

A Yes.

Q From where did you obtain this document?

A At Rio Rancho or at Bob Berg's, I am not sure, maybe even through the mail. I don't remember.

Q But it was your document, nonetheless?

A Yes, it was in my possession.

MR. ARKIN: I offer Exhibit L.

MR. DEVORKIN: No objection.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit L received in evidence.)

Q Do you recall reading through this document, Mrs. Henry?

A I do.

Q This document consists of 45 model home plans, you agree with that, don't you?

A Yes.

Q With pictures of homes?

A Yes.

Q Do you recall making any notations on this booklet as you read it?

A Yes.

Q On page 4 in the lower left-hand corner you have a price on a home which is called El Rancho model 496C. Is that your handwriting?

A It is.

Q $21,100?

A That was in 1968.

Q That was the price of that house then, is that correct?

A I believe so.

Q Are you saying you got this booklet in 1968?

A '68, '69, the latest. I know it was an early one because when I went back to Rio Rancho they did not honor those any more.

Q You mean to say the prices of the homes had gone up?

A Almost double.

Q You are sure of that?

A Yes.

Q That's your oath here today that the prices

A 574

of the homes had almost doubled in a couple of years?

A This is what they wanted me to pay for it.

Q I am asking you is it your testimony here today when you went back to Rio Rancho two years later that the prices of those homes had almost doubled?

THE COURT: When you say price of the home, what the witness is saying is that the amount that they were going to charge her to erect the home, that's what you mean by price is what she was going to be charged?

MR. ARKIN: If your Honor please, these are all subject to listings.

THE COURT: I don't care what they are subject to. The witness has given you a definition of price which you don't want to take but I think it has to be kept in the forefront. Price is what she was to be charged to erect that specific home. That's price to her.

MR. ARKIN: I will ask the question that way, your Honor. Thank you very much.

Q Is it your testimony then that you were going to be charged about double what these prices were two years later, is that your testimony?

A That's what they wanted to charge and that's why I couldn't buy.

Q Two years later it was doubled, all right.

On page 8, is that your handwriting, 27,700 over the Casa Bonita, another model home?

A Yes.

Q The same thing with that, it was about double?

A No, I don't think that was quite that much. They had gone up. All of them had gone up.

Q Some of them not quite as much as doubled?

A Right.

Q How much had the Casa Bonita gone up?

A I don't recall.

Q What about the El Pino, 23,300?

A In the documents you got yesterday there is also the price list --

THE COURT: Wait. You are being asked about that only. Don't volunteery anything.

Q Do you recall whether the El Pnio had gone up almost double in two years?

A I can't recall.

Q How about the Casa Luna which appears on page 12, that model?

A I couldn't recall specifically.

Q You don't really know whether it went up double or anything at all, do you?

MR. DEVORKIN: Objection, your Honor.

THE COURT: Sustained. She says they went up doubled. You are asking for specifics and she can't give you that.

MR. ARKIN: She says some of them didn't go up double. I am trying to probe.

(Continued on next page.)

Q Do you recollect about the Casa Luna?

A I don't recall.

Q How about the El Camino, 16,800 in your handwriting, do you have any recollection about the price increase on that?

A I would have to study the models to see which ones I was really interested. I just went through this book and put down the price that was asking on the slips so that when I came and looked at the pictures I would have a recollection of the price they were asking for that house. I had no intention of buying all those.

Q One of these models, I believe that is your handwriting, best.

A Best suited to my living conditions or my resale value that I thought.

Q You say your living conditions. Didn't you pick this out because you thought you could live best in this kind of house?

A I picked out a house that I enjoy feeling someone else would enjoy it also.

Q When you picked out a house that you thought was best for you you thought that would enhance its investment value, am I right?

A Right.

Q That is the only reason you picked it out as the best house?

A No, not the only reason.

Q Was just the little bit of the reason that you might have wanted to move there yourself?

A Restate that.

Q Was part of the reason that you wanted to move there yourself?

A The house?

Q The house that you picked out as best.

A No.

Q When you say it was suitable to your living conditions you thought that that might make it more suitable to other people's living conditions, is that fair to say?

A I thought it would be more appealing as a resale or as an investment.

MR. ARKIN: May we have a document entitled Price List Effective September 1, 1970 marked as M for identification.

(Defendant Howard Friedman and Henry Hoffman Exhibit M marked for identification)

Q Mrs. Henry, do you recognize this document, Exhibit M?

A Yes, I do.

Q Is that one of the ones you brought to court yesterday?

A Yes.

Q And you obtained that from Rio Rancho?

A Yes.

MR. ARKIN: I offer M, Mr. Devorkin.

MR. DEVORKIN: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit M received in evidence)

xxx

THE COURT: We will have a short recess.

(Jury left the courtroom)

(Recess)

(In open court - jury present)

THE COURT: You may proceed.

Q Mrs. Henry, showing you again Exhibit L, and that is page 30 of Exhibit L, I note that you have written in your hand on the middle of that page 15,600, is that correct?

A That was taken from the price list.

Q And that was the 15,600 written on top of the La Cima model?

A Yes.

Q You say this was 1968 or '9 when this was done? Wasn't that your testimony?

A That is what I said. I am not sure what year it was.

Q You believe it was 1968, 1969?

A About '69, yes.

Q I show you Exhibit M which is entitled Price List Effective September 1, 1970 and ask if you will look there for the La Cima.

Are you able to find it on there?

A Yes.

Q What is the price of the La Cima?

A 15,600.

Q And the price you wrote for La Cima, say, about 1969 was what?

A Fifteen, six. Can you get the copyright date on that book?

Q I take it that sometime in the year 1970 your husband got ill again?

A No, he got seriously ill in '72.

Q He was not ill in 1970?

A He was taken ill in '59 or '60 and all through this time we had contacted the doctor. He had a coronary. Do you want me to elaborate on this?

Q That is all right. You say he got sick in '59 or '60 and up through 1970 he was sick from time to time?

A Not very much, no. He had had a coronary and the doctor said it healed over and he felt he was able to go back to work and work. He had been out about four months.

end t4b

Q Tell me, during the years say 1959 and '60 up through 1970, did you ever apply for any other life insurance for your husband or did he apply for it?

A No, he was insured by his company.

Q That is just the life insurance that you got through the purchase of your land in 1968, that is the only life --

A No.

MR. DEVORKIN: She said his company.

MR. ARKIN: Excuse me, Judge.

Q The only life insurance you got then was in 1968 at the time you purchased your first land from AMREP, isn't that so?

A I didn't get life insurance from AMREP.

THE COURT: I don't understand what you are talking about.

MR. ARKIN: If your Honor please, let me rephrase the question.

Q Do you recall testifying yesterday in respect to compulsory insurance or non-compulsory insurance on property you purchased in 1968 so that if your husband were to die after you purchased the land in 1968 you would get a title free and clear to that property, do you remember that?

THE COURT: What has that got to do with your question which is that is the only life insurance he had and the answer is no.

She said her husband's company gave her life insurance.

MR. ARKIN: If I was unclear, your HOnor, I am very sorry. I will follow it up then.

THE COURT: Go ahead.

A I was not aware that I was even insured for the first property of land. I was not aware that they were offering me any kind of insurance for him.

Q You do recall signing -- may I have that, please -- I show you Defendants' Exhibit G, which was introduced in evidence yesterday, and ask if you can identify at the bottom of that page, as you did yesterday, your signature?

A I am identifying my signature. May I read this a little more?

Q Yes, if you would like you can read it to the jury.

A I should have read it sooner.

Q Why don't you read it now.

A Seller acknowledges that buyer has paid to it upon this date the sum of $887 which sum represents at least fifteen or twenty percent if over sixty years of age of the total purchase price under the agreement.

The designated buyer named below hereby represents that he or she is less or more than sixty years of age and to the best of his knowledge in good health on that date thereof.

Isn't that what you want?

Q Does that finish the paragraph?

A No, it doesn't. Shall I read the entire thing?

Q That is enough. Let's go on. You may put that down, if you like, or give it to me here.

Excuse me, perhaps you should read the rest of that. Would you kindly do that? Do you know where you left off?

A Yes.

In the event of the designated buyer's death at a time when the buyer is not in default hereunder and upon the furnishing to the company within thirty days of the death of proof of such death, seller shall deliver a full paid warrantee deed to the estate of the deceased designed free and clear of encumberance except those referred to herein. Should there be more than one buyer mentioned in this agreement, the provisions shall apply to the life of only one buyer whose name must be designated therein and who shall be known as the designated buyer.

MR. ARKIN: May I have that now?

Q Would you please tell me, if you will, whom the designated buyer is upon this document?

A We had never been pointed out that.

Q Would you please tell me what the document says, ma'am?

A I was supposed to have been the one to buy it. He wasn't even at the meeting.

Q Who signed over designated buyer?

A Martin Henry.

Q Who is that?

A That is my husband. He was not there.

Q He was not there when he signed it?

A This was brought to my home.

Q Is that his signature?

A Yes, it is.

Q He was there when he signed it, wasn't he?

A Yes.

MR. ARKIN: Would you please mark a one-page thermofax copy, dated December 3, 1970 with the designation"Route to Newman" as N.

xxxx (Defendant Howard Friedman and Henry

Hoffman Exhibit N marked for identification)

Q I show you Defendants' N for identification and ask if you are able to identify that document?

A I had not seen this. May I read it?

Q Are you able to identify the handwriting on it, Mrs. Henry?

A I can identify my husband's signature, yes.

Q What about the handwriting, is that your husband's handwriting?

A I don't really know. It doesn't really look like it.

Q You can only identify the signature but not the handwriting?

A Yes. The handwriting does look a little different.

Q Than the signature?

A It does to me.

Q Is it your testimony, then, that this is not your husband's handwriting, referring to the body of this document?

A I cannot say it is or it isn't. I can only say that his signature looks to be his. It must be that. I would like to read it, though.

Q Let me ask you if you will read from the second paragraph on this document, Exhibit N, down to and including the second sentence within that paragraph which ends with the word "hospital".

Would you read that and tell me if it refreshes your recollection as to what the state of your husband's health was in 1970?

A I would like to read the entire thing if I may.

MR. DEVORKIN: I object. She has never testified that she doesn't remember what the state of her husband's health was in 1970.

THE COURT: She is being asked what it was.

MR. DEVORKIN: Mr. Arkin said does it refresh her recollection as to the state of his health.

THE COURT: The last question was what his health was in 1970.

I am saying that is the question and she may answer it.

What was the state of your husband's health in 1970, ma'am?

THE WITNESS: Your Honor, may I read this?

THE COURT: That isn't the question.

THE WITNESS: He was working. He has always had problems, minor problems like all of us, and into 1970 he had been working two jobs and had not had a heart attack since his first one in '59 or '60.

THE COURT: He had no heart complaints in 1968?

THE WITNESS: Yes, he always has chest pains occasionally.

THE COURT: All right. That is the answer to your question.

Q I take it, Mrs. Henry, that you don't recall, then, that in November or in December of 1970 that your husband had written to the company saying he had become ill and entered the hospital for a serious operation?

MR. DEVORKIN: I object, your Honor.

THE COURT: Overruled.

MR. ARKIN: May I repeat the question because Mr. Devorkin interrupted me.

THE COURT: You may repeat the question.

MR. ARKIN: Thank you.

Q You don't recall, then, that your husband wrote to the company in November or December of 1970 and said that he had become ill and consequently entered the hospital and had a serious operation? You don't recall that?

A No, I don't.

Q With respect to the August 5, 1970 transaction, the one that you said took place in Newburgh, do you remember that?

A Yes.

Q And that was one that you say that you entered into on your own, am I right? That is to say, you went to a dinner party on your own that night in Newburgh?

A I was invited.

Q You met Mr. Geller there?

A Yes.

Q You say that he sought to pressure you into buying more property even though you didn't want to do it at that time?

A Yes.

Q Eventually you and he and two other men went into a back room and you were persuaded to take or to sign another agreement at that time to buy more property?

A The other two men were already in the room and Mr. Geller brought me in, yes.

Q Do you remember whom the other two men were?

A No.

Q They didn't frighten or threaten you in any way, did they?

A Oh, no, and neither did Mr. Geller.

Q You were all by yourself with these three men in that room?

A No, I believe my husband was in there with me.

Q You don't recall testifying yesterday that you were there by yourself?

A I don't remember really. I don't remember whether my husband was there or not because I was talking to Mr. Geller and my husband, from what I can recall, did not talk with him.

Q He was somewhere else?

A He was at the dinner. Where he was all the time, I don't know.

5a

Q You may have gone off by yourself with Mr. Geller and your husband stayed somewhere else and you dealt with Mr. Geller, is that so?

A I did the dealing with Mr. Geller.

Q Your husband didn't?

A I don't remember him saying --

Q Do you know if your husband signed an agreement that night to purchase more property?

A Yes, we both put our names on the document.

Q Only after you had spoken to Mr. Geller, not your husband?

A I don't recall whether he spoke to Mr. Geller or not.

Q Would your husband have just signed an agreement to buy land for $9,960 without speaking to Mr. Geller himself?

A I imagine he talked to Mr. Geller at sometime, yes.

Q You also imagine that he would have read the agreement which he signed?

A I imagine he did.

Q By then I take it you would have read the agreement, too?

A Yes.

Q But you changed your mind on that, is that correct?

A Yes.

Q Eventually you got your money back?

A Yes.

MR. ARKIN: May I have a one-page document which appears to be a letter, dated November 30, 1970, marked as O for identification.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit O marked for identification.)

Q Do you recall in about November or December of 1970 writing a letter to a Mr. Bob Berg?

A If I may see the letter, it may refresh my memory.

Q Do you know who Bob Berg is?

A Yes, I do.

Q Do you have any recollection at all of writing a letter to him, yes or no?

A No.

Q Do you ever recall at about that time saying to him in words or substance, either orally or in writing, that you know we have been more than faithful in our payment and more than pleased with Rio Rancho. We are still planning to live there --

THE COURT: If you do that, show her the letter and let her read it and ask her if it refreshes her recollection.

MR. ARKIN: Certainly, your Honor.

Q Please read this letter, Exhibit O for identification.

(Pause.)

A I wrote this letter, but, believe it or not, I really don't remember it that well. I should have.

Q Ma'am, does it refresh your recollection, then, that in that letter which you say you wrote you said --

MR. DEVORKIN: Why doesn't he offer the letter, your Honor?

THE COURT: He doesn't have to.

MR. DEVORKIN: She said she wrote it.

THE COURT: He doesn't have to.

MR. ARKIN: May I proceed, your Honor?

THECOURT: Yes.

Q Does it refresh your recollection, Mrs. Henry, that you wrote at that time, "You knew we have been more than faithful in our payment and more than pleased with Rio Rancho. We are still planning to live there and, as you know, we do have a lot of property with you for example and have been pleased with it." Do you remember that?

A I am pleased with Rio Rancho till this day, yes.

Q Do you recall saying that then?

A I am pleased with Rio Rancho as a community to live in, but I am complaining about my investment.

THE COURT: Wait a second. He didn't ask you that.

Q Please answer the question, if you will.

A I am sorry.

Q Do you recall that in August of 1971 your sons visited Rio Rancho?

A Yes.

Q Was it one or both, ma'am?

A Both.

Q Do you know how long they were there?

A Robert was going to school at that time at the University of New Mexico and John, my husband and I visited.

Q I am talking about in August of 1971. There were two visits in 1971. Do you recall your sons went out there ahead of you in 1971?

A I know they flew out one time or flew back. No, they came out with us and flew back.

Q Do you recall going out to Rio Rancho in September of 1971?

A Yes.

Q Do you recall with whom you went at that time?

A Yes, my husband and I.

Q That was jut you and he at that time, wasn't it?

A Robert had already been out there. He went out to school in August.

Q But you went out there then, just you and your husband that time?

A Yes.

Q Mr. Henry?

A No, I think John was with us because he signed a paper and we split the lots at that time.

Q Did you look at your property, the particular piece of property which you owned when you were out there in 1971?

A Are you referring to unit 17?

Q I am referring to any property which you may have owned at that time.

A Yes.

Q Do you recall whether you were satisfied at that time in 1971?

A Yes.

MR. ARKIN: Please mark this document entitled "Record of Property Visitation" dated 9-13-71 as P.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit P marked for identification.)

Q Mrs. Henry, do you recognize Exhibit P?

A Yes.

Q Do you recognize your signature?

A Yes.

MR. ARKIN: I offer Exhibit P, Mr. Devorkin.

MR. DEVORKIN: May I see it, Mr. Arkin?

MR. ARKIN: Certainly.

MR. DEVORKIN: No objection.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit P received in evidence.)

Q Mrs. Henry, on Exhibit P, which is a record of property visitation, dated September 13, 1971, did you sign here that you were satisfied with the home site which you purchased?

A Yes.

Q Do you observe on the bottom of this document the space for purchaser's comments, three lines, do you see that?

A Yes.

MR. ARKIN: May I show that to the jury, your Honor?

See the "Purchaser's Comments" and three lines.

Q Mrs. Henry, in 1971, did any of the disillusionment or unhappiness from 1968 still remain?

A The disillusionment --

Q I am asking you yes or no, did you still have disillusionment in 1971 that you spoke about in 1968?

A Yes.

Q You didn't make any kind of notation or comment, did you, on Exhibit P as to that?

A No, I didn't.

Q You signed that you were satisfied, didn't you?

A I felt it useless to sign anything else.

Q Ma'am, you signed it, didn't you?

A Yes.

Q I take it, Mrs. Henry, that you would not describe yourself as a very weak-willed person, would you?

A I don't know what I would do in given situations.

Q During that visit in 1971 did you cause part of your property to be assigned to your sons?

A Yes, I did.

Q Was that a part of the ranchette property which you had acquired?

A Yes.

Q Then undertook to continue the payments on that?

A They had been paying all the time.

Q On that portion of it?

A Yes.

Q You wanted them to have it?

A I wanted it to be in their name, yes.

Q Do you remember visiting Rio Rancho again?

A Yes.

Q That was in August of 1973?

A Yes.

Q You visited there with your sons?

A Yes.

Q Did your husband go at that time?

A Yes.

Q Did you drive out again?

A Yes.

Q Did you camp again?

A Yes.

Q How long were you there that time?

A A few days.

Q You visited your property again, didn't you?

A Yes.

Q You drove around Albuquerque?

A Yes.

Q You saw the university?

A He was going there.

Q You saw it, didn't you?

A Yes.

MR. ARKIN: Please mark one-page thermofax entitled record of property visitation of 8-27-73 as Exhibit Q.

XXX

(Defendant Howard Friedman and Henry Hoffman Exhibit Q marked for identification.)

Q Mrs. Henry, do you recognize this document?

A I see my name on it, but I don't know what it's about.

Q Is this your signature?

A Yes.

Q Are you able to read --

A No, I can't read it. It is blocked out.

Q What portion of it can you read of this particular sentence? Try to read the portion of the sentence which immediately precedes your name and tell me if you are able to make it out. Just the words that you are able to make out.

A I am satisfied.

MR. DEVORKIN: I object to reading from a document not in evidence out loud.

MR. ARKIN: I am asking her to make out the words.

THE COURT: She's reading it out loud.

MR. ARKIN: Please don't read it out loud, Mrs. Henry.

THE WITNESS: Yes.

MR. ARKIN: I offer Q in evidence.

Mr. Devorkin, would you care to look at it?

MR. DEVORKIN: May I have a brief voir dire, your Honor?

VOIR DIRE EXAMINATION

BY MR. DEVORKIN:

Q Mrs. Henry, is that the date you signed it?

A It is the date on there. I really don't recall the whole document.

Q Do you remember whether you signed it? Do you remember signing this document?

A No, I don't.

Q You don't know what date you signed it?

A It says 8-27. I guess that's supposed to be '73.

Q Did anybody say anything to you before you signed the document?

MR. ARKIN: If your Honor please, this is voir dire.

THE COURT: Sustained.

MR. DEVORKIN: I have no objection to Q.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit Q received in evidence.)

(Continued on next page.)

CROSS EXAMINATION (Continued)

BY MR. ARKIN:

Q Mrs. Henry, do you agree that in 1973, in August of that year you signed this document, Exhibit Q, which is entitled record of property visitation and said that you were satisfied with the property you had? Do you recall that?

A Yes.

Q In that year too you made no comments to the contrary on thatdocument, did you?

A Not on the document but to my --

Q When you were out there in 1973, you had gone out there in '63 and '68, did you observe a change in Rio Rancho from say between 1968 and '73?

A Yes, a slight growth. Pardon?

Would you restate the question?

Q From 1968 to 1973 you say there was slight growth in Rio Rancho?

A There was more than slight from '68 to '73.

Q Do you recall at that time seeing the shopping center?

A Yes.

Q And you saw the motel?

A Yes.

Q And the golf course?

A Yes

Q And you saw Corrales Heights too, didn't you?

A Yes, I did.

Q Would you tell the jury what Corrales Heights was? Would you describe to the jury Corrales Heights?

A It was a community of model homes.

Q Do you know how many homes were there then?

A No, I do not.

Q Would about 1200 or 1167 homes sound about right to you?

A I really have no idea.

THE COURT: The witness described it as model homes. Model homes to her are homes that are there for people to look at to use as a sample to buy not people living in there.

MR. ARKIN: I understand what the witness said.

THE COURT: You are letting it stand?

MR. ARKIN: I will get to it. Thank you.

Q WNen you say model homes, as his Honor suggested, you mean there are only a few homes there?

A When you said had I seen Corrales Heights, when I saw Corrales Heights I went there to visit the model homes that were erected just for our visitation to look into to buy.

Q But there were other homes in Corrales at that time?

A Yes, there was.

Q There were many other homes, weren't there?

A Quite a few.

Q And that was something new from 1968 to 1972, wasn' it?

A Yes.

Q And you would agree, wouldn't you, that that showed growth?

A Yes, in that area.

Q In 1973 too you received the deeds for certain property you fully paid, didn't you?

A Yes, I paid it in full.

Q That was deeds for commercial property unit 11?

A Yes.

Q And residential property in unit 2?

A I wasn't aware that was paid. That is not mine.

MR. ARKIN: Would you mark this document entitled warranty deeds as R and S for identification.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibits R and S marked for identification.)

Q Mrs. Henry, let me show you Exhibit R and ask if you are able to identify that.

A Yes.

Q What is that, ma'am?

A It's a property deed.

Q Is that your property deed?

A Yes, it is.

Q For what unit?

A 11. Commercial.

Q Are you able to identify Exhibit S which, I agree,is a bit dark?

A I can't read it. It's a warranty deed but I can't read it.

Q Does it look like the warranty deed which you received?

A Are you referring to that one?

Q You received --

THE COURT: In the manner of form?

Q You received two warranty deeds in 1973, didn't you, ma'am, do you recall that?

A I received one. The other was addressed I believe to my son and I gave him the envelope. What was in it, I don't know.

Q You didn't look in the envelope to see what was in it?

A No.

Q You just gave it to him?

A Yes, his name was on it. By this time he was married.

Q But you are able to identify R as one of the deeds which you received?

A Yes.

MR. ARKIN: Unfortunately the thermofax process with respect to S was not as effective.

Mr. Devorkin, would you inspect them and see if you have any objection to them going into evidence? I offer R and S both.

MR. DEVORKIN: I have no objection to R.

No objection to S.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibits R and S received in evidence.)

THE COURT: For what unit does that cover? That's S.

MR. ARKIN: S. covers unit 2, I believe, your Honor. That's unit 2, block 49, lot 1.

MR. DEVORKIN: I just suggest that Mr. Arkin make an attempt to get a more legible copy of S but I have no objection to it coming into evidence.

MR. ARKIN: I will do everything I can to see to it that the reproductive processes are better next time.

Q Mrs. Henry, do I recall accurately that in 1973 you paid up your property or you paid up the amount in those two properties?

A I paid up only on 11.

THE COURT: Wait. The second property represented by Exhibit S is owned by the son and not buy her.

MR. ARKIN: I understand.

THE COURT: Your question is did she pay it up?

MR. ARKIN: That's right.

THE COURT: Out of her funds?

MR. ARKIN: That's what I am asking, your Honor.

A No.

Q Did you pay up one of those properties out of your funds?

A I paid up my own property which was 11.

Q Your sons paid up their property out of their funds?

A I imagine they did if it's paid. I wasn't aware it was paid.

Q You did pay up a certain property out of your funds to save interest, isn't that so?

A Yes, I did.

Q Do you recall when that was?

A I had taken care of this lady and she let me borrow the money from her to pay this and I believe it was in '73 or '74.

Q How much was that that you say you borrowed?

A I borrowed $3,000 from her.

Q I take it you were not going to pay her any interest, is that right?

A Right. I am still taking care of her.

Q In 1975, about October, do you recall reading or hearing anywhere about charges being leveled against AMREP and Rio Rancho?

A I do not remember the date I heard it but I did hear on television that they were bringing charges against Rio Rancho.

Q That was in 1975, last year?

A Yes.

Q Did you hear that the charges were that Rio Rancho was a fraud?

A Yes.

Q Did you call somebody at Rio Rancho?

A I did.

Q Do you remember who it was that you called?

A No.

Q Do you remember telling that person, whoever it was, when you called that you were upset over the publicity?

A Yes.

Q And that you hoped and prayed that it would all work out well for your sake and their sake?

A I don't remember saying I would pray about it. I do remember saying I hoped.

MR. ARKIN: No further questions.

MR. FLEMING: I have a few questions.

THE COURT: I thought it was agreed that giving the names of witnesses in advance was for the purpose of giving the ability of concentrating cross examination with one attorney.

MR. FLEMING: It's not for concentration.

THE COURT: I will revoke that practice with witnesses then. I allowed it on that basis. You may proceed.

CROSS EXAMINATION

BY MR. FLEMING:

Q Is the son that went to the University of New Mexico the same son that went to Atlantic Union College?

A No.

Q You have two sons?

A Right.

Q The oldest went to Atlantic Union College?

A For a year.

Q Did he then go to the University of New Mexico?

A No, he went to Washington, D.C.

Q To college?

A Yes.

Q What college?

A Columbia Union and Maryland U.

Q University of Maryland?

A Yes.

Q It's your younger son that went to the University of New Mexico?

A Yes.

Q When did he enter the University of New Mexico?

A '71, August.

Q Was that on a scholarship?

A No.

Q Did he register at the University of New Mexico as a resident of New Mexico?

A I believe he took up his residency there at that time. He got a hotel room, a house. I don't know how he registered.

Q My question is, am I correct that the University of New Mexico gives a substantial tuition discount to a resident of the state of New Mexico?

A I really don't know.

Q Do you know whether your son when he went to the University of New Mexico registered as a residentof New Mexico?

A I wouldn't know. I didn't go with him.

Q Do you know if he claimed his ownership of land at Rio Rancho as --

A I don't know.

Q You know nothing about what he did with regard to the University of New Mexico in terms of registration?

A No, I really don't.

Q You did testify yesterday that you purchased land on Rio Rancho on the first occasion in 1968 because -- at page 266 -- "My husband had a heart attack and the doctor at the Veterans Hospital told me they wouldn't expect he would live and I gather I was panicky about facing the future with bringing up three children and having a college education to give them that I was anxious to make good investments for the future."

Did you so testify yesterday?

A I would like to make a correction if I may, your Honor.

THE COURT: First you have to answer the question. Did you so testify yesterday?

A I think I did. Yes.

Q That was in response to a question by Mr. Devorkin, "Were there any other reasons you thought it was a good investment or any other reasons you thought it was a good investment for you," and this was in 1968.

A Yes.

Q And that was your answer under oath?

A Yes.

Q With regard to that first investment your husband signed a check, did he not?

A Yes.

Q And he signed the check at home, not at the dinner?

A Right.

Q And with regard to that first investment your husband signed as the designated owner for the purpose of insurance in case of death?

A No. We did not have that pointed out. We weren't aware of that. I was supposed to have been the one buying the property.

Q Regardless of what you were aware of, is it a fact that your husband signed the check at home?

A Yes, he did.

Q Regardless of what you are aware of, is it a fact that your husband signed as the designated owner?

THE COURT: That's already been gone over by Mr. Arkin. Let's not repeat it. It's in the record.

MR. FLEMING: I understand.

(Continued on next page.)

Q On your oath yesterday did you testify that against that background you did not recall anything having to do with the insurance?

A I do not recall having anything to do with the insurance.

Q Did you testify yesterday that you believed that the development will reach your first property in three to five years?

A Yes.

1 Q That you therefore expected you would profit from your investment in three to five years?

A Yes.

Q Did anyone from Rio Rancho tell you that?

A Mrs. Goff advised us to buy our commercial property and stated to my sons "You buy in Unit 2 because your investment will take longer to be realized than your parents'".

Q Isn't it a fact, Mrs. Henry, that the only thing any AMREP representative or the only thing Mrs. Goff said to you about appreciation was that your property could triple in twenty years?

A Yes. She didn't mention twenty. She said about fifteen.

Q Do you remember a Mr. Albert Villafani coming to interview you on August 30, 1976?

A Yes.

Q Do you remember telling Mr. Villafani in your husband's presence that all Betty Goff had told you was that your property could appreciate three times over twenty years?

A I said from 15 to 20.

Q You got an acre of land from your father in 1950 in New City, is that correct?

A Yes.

Q And that acre, you paid $550 for it?

A Right.

Q You put up a house worth $8,000?

A Yes.

Q And the houseand the property are presently worth 26 years later, $65,000 in your judgment?

A Yes.

Q That is more than triple, isn't it?

A Yes.

Q How much land did your father own in New City?

A Just that.

Q Just that acre?

A Yes.

Q Was that acre near the center of town?

A Yes.

Q And the ranchette that you bought at Rio Rancho was seven and a half miles from the developed area of Rio Rancho, was it not?

A Yes. I don't know, I am sorry. I don't know how many miles it was from the center.

Q Did you so testify yesterday?

A I said I thought. I am not sure as to the mileage.

Q Do you know Mr. Geller on a first-name basis? Withdrawn.

Do you call Mr. Geller Lenny?

A After I had spoken with him several times I did refer to him as Lenny.

Q You talked to him as Lenny?

A Yes.

Q Was he a friend of yours?

A I don't consider him a friend of mine, no.

Q Did you ever talk to Chester Carity?

A No.

Q Did you ever talk to Daniel Friedman?

A No. I don't remember.

Q During the period 1968 to 1975 did you have an attorney?

A No.

Q Did you ever discuss Rio Rancho or AMREP or your investment at Rio Rancho with an attorney?

A My son did. I did not.

Q Do you know who Mrs. Shirley is?

A I had spoken to her.

Q Do you know who she is?

A No.

Q Had you ever spoken to Mrs. Shirley?

A Yes.

Q Is she connected with Rio Rancho?

A Yes.

Q Did you write her a letter?

A I believe so.

Q Did you sign that letter Mrs. H. Henry?

A Yes, I guess I did.

Q Did you refer in that letter to my lawyer?

A That is because my son --

Q My question is, did you refer in that letter to "My lawyer"?

A Yes.

Q And this had to do with the transfer of the deed on your daughter's property?

A No, I am not aware of that.

Q Do you recall writing this letter --

THE COURT: Wait, show it to the witness and ask if she wrote the letter.

(Defendant Chester Carity and Daniel Friedman Exhibit T marked for identification)

Q I show you T for identification and ask you if you recognize it?

A Yes, I do. This was a different reference where I said where I didn't have a lawyer.

Q Does this letter have to do with the transfer of your daughter's property to your name?

A Yes.

Q Am I correct that your daughter had no right as a matter of contract to transfer the property to you?

MR. DEVORKIN: That is a legal conclusion.

MR. FLEMING: Withdrawn.

Q In this letter having to do with the transfer of your daughter's property to your name you said your lawyer had advised you that Rio Rancho should send you the deed and you would execute it?

A The lawyer I am referring to there is just a friend of mine. He is a lawyer.

Q When you went out to Rio Rancho the first time in 1968 that was five years after you first visited Albuquerque, is that correct?

A Yes.

Q Was the weather as good as you remembered it?

MR. DEVORKIN: We have been all through this with Mr. Arkin.

THE COURT: We have been. I won't permit it, Mr. Fleming.

Q Standing on your property at Rio Rancho you have testified that you were dissatisfied with your investment; is that right?

A Yes.

Q In 1968?

A Yes.

Q What fact made you dissatisfied with your investment?

A The fact that it was sand out in the boondocks. That is wnat I referred to it to the man at that time.

(Defendant Chester Carity and Daniel Friedman's Exhibits U and V marked for identification)

Q So the single fact was that it was sand in the boondocks, is that right?

A Yes.

Q Albuquerque was there?

A Not near our property.

Q You could see it from your property?

A Yes.

Q The Siandia Mountains were there?

A Like 20 miles away.

Q You could see them?

A Yes.

Q They were as they were pictured in the movie as you said yesterday to Mr. Arkin?

A Yes.

Q Rio Rancho was there?

A Yes.

Q The city had developed since you had been there in 1963?

A Yes.

Q There was, in fact, a new high school being built?

A Yes.

Q Between the city and Rio Rancho?

A Yes.

Q The road was widened?

A Yes.

Q Paved?

A The road going up to Rio Rancho?

MR. DEVORKIN: Which road?

Q The road coming from Albuquerque to Rio Rancho, is that right?

MR. DEVORKIN: Mrs. Henry didn't say she had been to Rio Rancho in 1963. I don't think there is a foundation to comparing that road to 1968.

THE COURT: That is a fair objection.

Q When you went to Albuquerque in 1963, did you travel the road which subsequently went by Rio Rancho or which went by what later became Rio Rancho?

A No.

Q So you can't compare the roads?

A No, I really can't.

Q I show you U for identification and I will ask you if that is a fair representation of the sand you are talking about when you say that is what discouraged you?

A Yes.

Q Am I correct that you knew in 1968 when you stook on this "sand" that you had a right to exchange into the developed area?

A I was not interested in exchanging then. I am sorry, yes.

Q You did?

A Yes.

Q Did you also understand that if you sold the sand you were standing on you would sell to whoever purchased that sand the right to exchange into the developed area?

A To develop one-half acre, that is all.

Q Did you understand in 1968 that you had a right to exchange into the developed area?

MR. DEVORKIN: Exchange what? I don't think that question is clear.

THE COURT: Clarify it.

Q You had the right on one acre, is that right?

A You are referring to a'68 property?

THE COURT: Yes.

Q One acre, is that right?

MR. DEVORKIN: Mr. Fleming knows that is incorrect and he shouldn't ask that question, your Honor.

THE COURT: She is being asked about a '68 purchase. That is as far as we have gotten.

MR. DEVORKIN: But Mr. Fleming knows the contract does not say that.

THE COURT: Wait until the next question before you object. The witness asked to have it clarified.

We are talking about a 1968 purchase.

Q What did you understand your exchange right to be?

A I understood my exchange right to be I could exchange one-half acre of my four parcels that I had into a developed area when I was ready to build. They didn't say anything about an increase of money.

Q That is what you understood, is that right?

A Yes.

Q It is also true you could have exchanged another half acre of your four acres for a building lot?

A No, I was not aware of that. I was under the assumption that I could only have the one. I was not under the assumption, I was told I could only have one-half acre, that the rest would have to stay there.

Q Did you understand that when you sold your property if you sold your property whatever exchange rights you had would go with the property?

A No. I didn't understand that.

MR. FLEMING: May I show this picture to the jury, your Honor?

MR. DEVORKIN: It is not in evidence, your Honor.

MR. FLEMING: I offer it in evidence.

MR. DEVORKIN: May we have a voir dire?

THE COURT: Yes.

MR. DEVORKIN: I am sorry, your Honor, I have no questions for the witness on voir dire.

(Defendant Chester Carity and Daniel Friedman Exhibit U received in evidence)

Q Those are the Siandia Mountains, is that correct?

A Yes.

MR. FLEMING: May I show it to the jury, your Honor.

THE COURT: Yes.

Do I gather this photograph is a photograph taken from the property that Mrs. Henry purchased in 1968?

MR. FLEMING: I have no idea of that. If I can make a representation I will.

THE COURT: Then I don't understand the purpose of the picture.

MR. FLEMING: Then I better take it back from the jury.

I can make a representation it is a photograph.

THE COURT: It is a photograph from someplace in Rio Rancho.

MR. FLEMING: My question is whether it is a fair representation of what she characterized as sand.

THE COURT: I won't let it in. If that was the representation of where she bought then the picture means something. I don't know there were trees on her lot. There are a lot of things on there.

MR. FLEMING: I thought I asked is it a fair representation .

THE COURT: Of sand. You can take a picture of sand over the eighty-odd square miles of Rio Rancho you will find sand. That is not the point, is it?

MR. FLEMING: I didn't mean to be improper.

Q Is it a fair representation of the lot you purchased or saw?

A I would say it is a little bit closer.

THE COURT: What do you mean a little closer?

THE WITNESS: A little closer to the mountains and this I gather is Albuquerque.

THE COURT: You look at that picture. In looking at the lower half of it is what we are interested in, the terrain, is that a fair representation of the land that you purchased?

THE WITNESS: A fair representation.

MR. DEVORKIN: Can I ask one or two questions on voir dire?

THE COURT: You went past that.

MR. FLEMING: I have nothing further.

THE COURT: I gather you have some redirect of the witness?

MR. DEVORKIN: Yes,your Honor.

THE COURT: Then we will adjourn for lunch and return at 2:15.

(Jury left the courtroom)

(Luncheon recess)

t6a

AFTERNOON SESSION

2:15 P.M.

(In the robing room)

THE COURT: What is the problem?

MR. ARKIN: Your Honor, I just have a question so there will not be any misunderstanding.

Am I to understand your Honor's direction not to speak to witnesses during their testimony to include not speaking to them until they finish testifying completely?

THE COURT: No, only on cross.

MR. ARKIN: Only on cross.

THE COURT: Absolutely, he has a right to talk to his witness before he redirects him.

MR. ARKIN: All right, that clarifies it.

THE COURT: On the other thing, I turned over or at least directed the government to turn over the names of witnesses in advance specifically on Mr. Arkin's plea that this would allow only one cross examination. They would know who the witness is and you could prepare in advance. It doesn't seem to be proved so the government no longer has to turn over names of witnesses in advance.

If you are going to have more than one defense counsel cross examining, then you will have to do it the regular way.

MR. FLEMING: Judge, just to express what our intention would be, it is to assign the principal corss examination to a single counsel to avoid the type of things I have seen in cases where every lawyer takes two hours with the witness.

I actually think it might have been me that made the representation at the time your Honor ruled earlier.

THE COURT: His plea to me was clearly to cut it down to one cross examiner.

MR. FLEMING: I remember saying something. It is our intention not to proliferate examination and I don't think that I lasted more than six or seven minutes today.

MS. HYNES: Your Honor, it was 25 minutes to 30.

THE COURT: I don't know what it was. The amount of time isn't the point. The point is that it is allowed to you so you can have one cross examiner. Actually all the stuff you asked Mr. Arkin -- most of it he could have asked because he was on the topic anyhow.

You started to go into things that he had done on cross and I had to stop you.

You will notice to the extent of the agreement of turning over 3500 material who is coming on the next day, but beyond that there will be no further turning over by the government of identity of the government witnesses.

MR. HOFFINGER: Judge, I thought we were adhering to that for general cross anyway. If we adhere to that, yesterday for example there was only one cross examination --

THE COURT: But today there were two. Tomorrow there may be three.

I will continue the directive if there is only one cross examination.

MR. HOFFINGER: There is only one problem. When you get those witnesses who talk about individual defendants, I take it your ruling wouldn't be for that. I take it the lawyers representing the individuals could ask about those individuals.

THE COURT: If the testimony is regarding a general course of the conduct plus a specific reference to one of the individual defendants, obviously you can do it.

MR. HOFFINGER: I understood that.

THE COURT: But taking this sort of count witness who doesn't know any of the individual defendants who was merely explaining the course of conduct that she experienced in buying the land, then one. So you make up your minds which way you want it.

MR. HOFFINGER: That is the way we have been working.

THE COURT: No, you haven't. We have only had two witnesses.

MR. ARKIN: In a day and a half, your Honor.

I think what your Honor is saying is very sensible. We don't want ten cross examinations here.

THE COURT: You had overnight to think about things that would have come up which you could have handled. The only thing you brought out was maybe this kid used the address to get a reduce fee at the University of New Mexico.

MR. FLEMING: What I want to be clear on is where we stand. If we say, all right, just one lawyer to a witness absent extraordinary circumstances, then what do we get?

THE COURT: What do you mean what do you get? What we now have agreed to. The witnesses two days in advance and over a weekend.

MR. FLEMING: We haven't gotten a witness list.

THE COURT: You are supposed to get witnesses designated two days in advance.

MR. HOFFINGER: We just get 3500 material.

THE COURT: No, come on, Ms. Hynes.

MR. KAUFMAN: At the time we turn over 3500 material, we tell the defendants these are the witnesses coming up.

THE COURT: Is it within the time frame?

MR. KAUFMAN: Yes.

MR. FLEMING: I thought it was going to be who was going to testify. I didn't know Monday who the witnesses were supposed to be.

THE COURT: You should have known who the witnesses would be.

MR. FLEMING: We got Jencks material for five or six material and I said who is first.

THE COURT: I think you ought to tell them.

MR. KAUFMAN: If Mr. Fleming wasn't told directly, he was told the victims were testifying and then the document witnesses were succeeding them.

MR. FLEMING: No.

THE COURT: He says no.

On the agreement as we worked it out before you will turn over the witnesses in their order as indicated before.

If they want to have more than one person cross examine, you don't have to do it. You are going to get your 3500 material the night before at best. Obviously if an individual is brought in in addition to general cross examination, the additional defendant can have his attorney cross examine.

MR. ARKIN: All right, your Honor.

MR. HOFFINGER: We can abide by that.

MR. RUBINO: May I make an application.

In respect of the defendant Oberman, he is now staying in a hotel room and he has to get out tomorrow morning, your Honor. They have to look for an apartment they could use for the next few months. May he be excused just tomorrow morning?

THE COURT: Bring him in here on the record.

MR. RUBINO: Now or later in the day, it doesn't matter.

THE COURT: Let's do it now.

MR. ARKIN: May we have the order of witnesses for this afternoon while we are here?

MR. FLEMING: I think what Judge Metzner said is we have an option of proceeding in one of two ways.

MR. ARKIN: I suppose we ought to talk about that, that is true.

MR. HOFFINGER: In any event, we won't proliferate.

MR. ARKIN: If I were to cut down my examination, your Honor --

THE COURT: I think you could have yours.

end tla

.PM

(Defendant Oberman enters the robing room.)

THE COURT: I understand you asked, Mr. Oberman, through your attorney, Mr. Rubino, to be granted permission not to appear tomorrow morning. The basis, I gather, is that you are presently living in a hotel room and you want o find a place to live during the course of the trial?

DEFENDANT OBERMAN: That's correct.

THE COURT: I am perfectly willing to allow you to do this if you put on the record that this is your wish, that you have consulted with your counsel and you know what it means not to be here when witnesses are testifying. Is that so?

DEFENDANT OBERMAN: I know what it means and it is my wish to do it.

THE COURT: All right.

DEFENDANT OBERMAN: Thank you.

MR. RUBINO: He will return at two tomorrow.

THE COURT: All right, let's go.

(In open court, jury present.)

HELEN HENRY, resumed.

THE COURT: You may continue, Mr. Devorkin.

MR. DEVORKIN: Thank you, your Honor.

XX

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mrs. Henry, showing you Defendant's Exhibit F in evidence, would you tell the jury what the notations on the one side of that page that I have shown you are?

A I have made a notation to the unit that we have and the amount of money put in to date.

The one side is that of my son's and the other side is that of ours, my husband and I.

Q The total amount is how much?

THE COURT: She has already testified to that on direct.

Q What was the total amount for the sons?

MR. DEVORKIN: I don't believe she testified to that, your Honor.

A That was $16,183 up to 1975.

Q The other side were notes to yourself?

A Yes.

MR. DEVORKIN: Can we have these marked Government's Exhibits 123-O, P, Q and R.

XXX (Government Exhibits 123-O, P, Q and R marked for identification.

Q Mrs. Henry, would you take a look at the photographs that are marked for identification as Government Exhibits 123-O, P, Q and R?

A Yes. It is Rio Rancho.

Q Do those pictures in those four photographs accurately and fairly portray property at Rio Rancho Estates?

A Yes.

MR. DEVORKIN: I offer Government Exhibits 123-O, P, Q and R.

THE COURT: What property? We are talking about the property that she bought. That was the point raised regarding the first offer of pictures by Mr. Fleming.

Q Do those pictures fairly portray some of the property that you own at Rio Rancho Estates?

A This looks like it is my 17 that it has. It has the high power lines going through.

Q How about the land itself that's shown in that picture?

A Yes.

Q This is referring to 123-O?

A Yes.

Q What about the other three photographs?

A They look about the same.

THE COURT: Of what?

THE WITNESS: Of the other --

THE COURT: Which ones?

THE WITNESS: I would identify this one as looking like unit 2.

THE COURT: Which one is that, Mr. Devorkin?

MR. DEVORKIN: 123-P.

THE WITNESS: This one would be 17.

MR. DEVORKIN: That's 123-O.

THE WITNESS: This one would be 17 also.

MR. DEVORKIN: That's 123-Q.

THE WITNESS: This one would look more like our commercial property.

Q In unit 11?

A Yes.

MR. DEVORKIN: That's 123-R.

Q There is a road shown in 123-R.

A Right.

MR. ARKIN: Objection, if your Honor please, that's leading.

THE COURT: Overruled.

Q Does that road fairly portray the roads that you have driven on to your own property?

A They look like the roads that I had driven on.

MR. DEVORKIN: I renew my offer, your Honor.

MR. ARKIN: May I see them?

MR. DEVORKIN: Certainly.

MR. ARKIN: We have no objection.

THE COURT: All right.

(Government Exhibits 123-O, P, Q and R received in evidence.)

MR. DEVORKIN: Your Honor, may I show those four photographs and Defendant's Exhibit F to the jury?

THE COURT: When you have finished with the witness.

Q Mrs. Henry, did you and I have a conversation over the lunch hour?

A Yes.

Q Now, in 1968, when you bought those four lots in unit 13, I take it from your testimony on cross examination that you thought you might use one of them to eventually move to?

A Yes, I did.

MR. FLEMING: I object to the form of the question, your Honor.

THE COURT: Overruled.

Q The others were bought for investment?

A Yes.

Q Did you understand when you bought that property that in order to exercise a right to exchange on one of those half acres that you would have to build a house on the property you were getting in exchange?

A Yes.

MR. FLEMING: Objection as to form.

THE COURT: Overruled.

MR. FLEMING: I am only talking about the leading nature of the question,your Honor.

Q Did you ever intend -- withdrawn.

The property that you wouldn't exchange, what would you do with that?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Did you ever intend when you bought that property to exchange all four half acre lots and build four homes?

MR. ARKIN: Objection.

THE COURT: She has already answered that. The answer is she couldn't.

She has testified on cross examination that under the contract she was only allowed -- that's what she says -- to take one of the four lots in exchange, but that the other three would have to be left where they were. They could not be used for exchange purposes.

Q Did your commercial property have an exchange privilege?

A No, it didn't. It was purely investment.

Q But did it have an exchange privilege, yes or no?

A No.

Q Did your ranchette property have an exchange privilege?

A No.

Q You testified I believe both on direct examination and on cross examination that when you visited your property in the fall of 1968 you were initially disappointed or displeased with the lots that you inspected, correct?

A Yes.

Q After spending some time with the salesman, you signed one of those property visitation forms, correct?

A Yes, I did.

Q Which in essence stated that you were satisfied with your lots, correct?

A Yes.

Q And you knew when you signed that form that that was your chance, that visit there was your chance to get a refund?

A Yes.

Q By the way, did anybody ever explain to you when you were signing those forms or did anybody ever ask you when you were signing those forms if you had any comments to place on the form?

MR. ARKIN: Objection.

A No.

THE COURT: Overruled.

Q Your answer was?

A No, they did not.

Q It was up to the salesman to put any comments down there?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q Between the time that you saw your property and you were displeased with it and the time that you signed that property visitation form, what, if anytning, did the salesman say to you to persuade you to keep your property?

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q What, if anything, did the salesman say to you?

THE COURT: Regarding what? This is redirect.

MR. DEVORKIN: I understand, your Honor.

Q WEat, if anything, did eh say to you before you signed this property visitation form?

THE COURT: Sustained.

Q What was the reason you decided to keep your property?

MR. ARKIN: Objection.

THE COURT: Overruled.

A I was told by the man who was driving us around in the car that Albuquerque had been closed on three sides and that the growth was primarily out to Rio Rancho Estates and that Rio Rancho was growing and that my property had already increased and that it would be a very good investment. The radio in the car kept saying, hold unit and lot number and I felt, well, this must be a good investment so I guess he is right and that was the reason I signed it and kept it.

(Continued on next page.)

Q Did you believe the things he was telling you?

A I did.

MR. ARKIN: Objection.

THE COURT: Sustained.

MR. ARKIN: Can we strike the answer?

THE COURT: Strike the answer.

Q Are you saying that you relied on what he told you?

THE COURT: The witness says she was told all that before she bought the property, before she ever saw it. That's why she bought it. Everything that the witness has just testified to she says she heard at the presentation at the dinner when she bought the property.

So nothing she says now is new to her.

MR. DEVORKIN: I understand. She is saying the salesman said this to her after she expressed displeasure in the property.

THE COURT: But she knew all this before.

MR. DEVORKIN: I understand. All I am saying is that the salesman told it to her again.

THE COURT: Go ahead.

Q When you transferred in 1969 some of the unit 16 property, I am sorry, when you transferred some of your unit 13 property and exchanged it for some unit 16 property you were given appreciation on your unit 13 property, correct?

A Yes.

Q What if anything did the sales person say to you about what the appreciation meant?

A The appreciation was the increase in the value of the land that I had owned that had gained over the past time, or year, that I had it.

Q When you went out there in 1969 and exchanged some properties for your unit 17 ranchettes what if anything were you told about the investment value of the ranchettes?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained. This is redirect.

Q You signed a satisfaction form again, didn't you?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q You were asked on cross examination about signing the property visitation form, correct?

A Yes.

Q And you signed one of those in 1969 in connection with your ranchette property?

A Yes.

Q Were you asked for your comments to put on that form?

A No, I was not.

Q Were you told anything by the sales person before you signed that form saying you were satisfied with your unit 17 property?

MR. ARKIN: Objection.

THE COURT: What?

Q Were you told anything about the sales person before you signed the form saying you were satisfied with your unit 17 property?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q You mentioned I believe on cross examination that you were thinking at one time I think in 1971 of buying a home at Rio Rancho for investment?

A Yes.

Q What did you mean by investment?

MR. ARKIN: Objection.

THE COURT: Overruled.

A I wanted to rent the house because Rio Rancho, the payments, were getting a little hard for me to make so I figured if we could get a loan and build a house that the rent for the house would cover my payments and the loan.

Q And you went out there in 1971 to try to arrange that?

A Yes, we did.

Q Do you recall being asked on cross examination about Corrales Heights?

A Yes.

Q And what Corrales Heights was?

A Yes.

Q Was Corrales Heights the area that they wanted to exchange you into?

MR. ARKIN: Objection.

THE COURT: Overruled.

MR. ARKIN: They wanted? What does that mean?

THE COURT: She spoke about a switch.

MR. ARKIN: I object to the phrase "they wanted," your Honor.

THE COURT: Reframe the question.

Q When you went out there in 1971, it was for the purpose of making an arrangement for a home, is that correct?

A Yes.

Q That you would possibly rent?

A Yes.

Q When you went into the Rio Rancho office, did you explain that to them?

A I did.

Q And they told you that you had to exchange your lot in, correct?

A Yes.

Q Where did they tell you your lot would be exchanged into?

A Corrales Heights.

Q Did they explain to you what you would have to do to exchange into Corrales Heights?

A They did.

Q What did they tell you?

A They said that I would have to take -- I could only have a quarter of an acre in Corrales Heights rather than the half acre they had originally told me.

THE COURT: This has all been gone into on direct. Next question.

Q Were you given any other alternative at the time?

A No.

Q I take it you didn't exchange and build a home?

A I did not.

MR. ARKIN: Objection.

THE COURT: Mr. Devorkin, this is redirect. You know what you have asked on direct. You cannot ask it again.

MR. DEVORKIN: Yes, your Honor.

Q Mrs. Henry, did anybody from the company ever tell you that the company was only putting utilities in areas owned by the company?

MR. ARKIN: Objection.

THE COURT: Sustained.

A No, they did not.

THE COURT: Wait.

MR. DEVORKIN: You can't answer.

MR. ARKIN: I move to strike that answer, your Honor.

THE COURT: Strike the answer.

Q The last property you bought was in 1969, correct?

A Yes.

Q And you signed a visitation satisfaction form in 1968, correct?

A Yes.

Q Did you understand when you signed that form and visited your property in 1968 that for any property you bought after that date, that is after your visit, you would not have a refund right?

A I was not aware that if I had bought any more residential property --

MR. ARKIN: May we have a responsive answer, your Honor?

THE COURT: Yes.

Q Do you understand my question?

THE COURT: Repeat the question.

Q You visited in 1968 and signed a satisfaction form, correct?

A Yes.

Q And you bought property after that, correct?

A Yes.

Q In fact, you signed future visitation forms saying you were satisfied with your subsequent purchases, correct?

A Yes.

Q When you visited the first time did you understand that any property you bought after that visit did not have a refund privilege attached to it?

MR. ARKIN: Objection.

THE COURT: Sustained.

Q What was your understanding of your ability to get a refund for property you bought after your first visit?

MR. ARKIN: Objection.

THE COURT: Overruled.

A I knew that commercial property had no --

THE COURT: You told us that.

A But I did not know that I would be able to get a refund if I had purchased more property on other residential.

MR. ARKIN: May we strike that answer as non-responsive?

THE COURT: Sustained. I don't know that she didn't have it.

MR. DEVORKIN: I asked her what her understanding of it was, your Honor. I think she did respond to that.

THE COURT: I don't think so.

MR. DEVORKIN: May I have a moment, your Honor?

THE COURT: Yes.

Q Mrs. Henry, I believe on cross examination you stated that you were satisfied with the Rio Rancho community.

A Yes.

Q But you asked to explain that, correct?

A Yes, I did.

Q Would you please explain what you meant by that?

MR. ARKIN: Objection.

THE COURT: Overruled.

Q You may go ahead.

A I was very pleased with Rio Rancho as a living community. I still am. I was just very disappointed in the part of the land that I had purchased for investment purposes.

MR. DEVORKIN: I have no further questions.

May I show the exhibits to the jury?

THE COURT: Yes.

You may step down.

MR. ARKIN: May we have brief recross?

THE COURT: This witness is excused. There was nothing that came out on Mr. Devorkin's examination that warrants any cross examination. The proponent of the witness has the last opportunity with the witness and I held him strictly to redirect.

(Witness excused.)

MR. DEVORKIN: The government calls Theodore Schreier.

XXX THEODORE R. SCHREIER, called as a witness by the government, being first duly sworn, testified as follows:

THE COURT: I suggest you continue and the jury may look at the exhibits during the afternoon recess.

MR. DEVORKIN: Fine.

XX

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q How are you currently employed?

A I am the chief counsel for AMREP Corporation.

THE COURT: Chief cook?

THE WITNESS: Corporate counsel.

Q How long have you been doing that?

A Since July, 1973.

Q Who do you work for in that capacity?

A AMREP Corporation.

Q Do you work for any particular officer of AMREP?

A No, not any particular officer at this time, no.

Q Did you work for a particular officer?

A Yes.

Q Which one?

A Solomon Friend.

Q Before 1973, did you hold any positions with AMREP Corporation?

A No, I did not.

THE COURT: Did you work for them?

THE WITNESS: No, I did not.

Q Did there come a time in early 1974 when AMREP Corporation, Rio Rancho Estates, Inc., and ATC Realty Corporation were served with a series of grand jury subpoenas by a grand jury sitting in the Southern District of New York?

A Yes, there did.

Q Did those subpoenas come to your attention?

A Yes, they did.

Q In response to those subpoenas did you appear on behalf of the different corporations I have mentioned and produce various documents for the grand jury?

A Yes, I did.

MS. CROSS: I object to the form of the question as leading.

THE COURT: Overruled.

Q For the convenience of the corporations when you appeared did you appear as the custodian of the records which the corporation was producing?

MS. CROSS: I object to that as leading.

THE COURT: Overruled.

A Yes, I did.

Q Do you recall how many times you actually appeared before the grand jury on behalf of the corporations?

A Many times but I don't recall the exact number.

Q Would it refresh your recollection if I said approximately 17 times in 1974 and once in 1975?

A It sounds about right.

Q That would be a fair statement?

A Yes.

Q From time to time as you appeared you did produce documents, correct?

A Yes, I did.

Q Where did you obtain the documents you were producing for the grand jury?

A I generally got them the morning before from Joan Dacey.

Q Who is Joan Dacey?

A She is a partner now at Jacobs, Persinger & Parker.

Q And she was representing the corporations in the grand jury proceedings?

A Yes, she was.

Q When the subpoenas came to your attention during the course of the grand jury proceedings, what if anything would you do in response to those subpoenas?

A I would discuss those subpoenas with Mr. Friend and we would assign various people to gather the material called for by the subpoenas.

Q What kind of people did you assign to gather the material?

A We would mark down the name of the person most likely to have the material, whoever it would be, a manager, a lawyer on the staff, an officer of the company.

Q What would you do then?

A We would tell that person to get this type of material.

Q Would they respond to your instructions?

A Yes, they would.

Q And the material would be produced for you?

A The material would be produced probably for me or somebody else and it would be shipped to our counsel's office.

Q It was produced for somebody acting under your supervision or acting in conjunction with you?

A Yes.

Q Did you make searches yourself at times for documents?

A Yes, I did.

Q What kind of files did you search for documents?

A I can't remember at this time what kind of files I searched but I made some searches and I don't recall at this time.

Q Were the files you were searching files of the company or company employees?

A Yes.

Q Did you ever search the files of any of the individual defendants in this case?

A No, I did not.

Q Did you ever cause those files to be searched?

A Yes, I did.

Q How would you go about doing that?

A Actually, with respect to the files of the individual defendants I assigned that to David Waldman, a lawyer on my staff, to speak to the defendants and to have them search their files.

Q Did you ever discuss that with any of the individual defendants?

MR. ARKIN: Objection, your Honor. There might very well be a problem which we have discussed before here.

THE COURT: I can't say yes or no.

THE WITNESS: Yes, I did.

MR. ARKIN: I will say yes.

Q The answer was yes?

A Yes.

Q Did any of the individual defendants produce documents for you to turn over to the grand jury from their own files?

A I believe they did, yes.

Q Do you recall which defendants?

MR. FLEMING: What is the purpose of this? Is this authenticiation?

THE COURT: I assume it is authentication. It can't be business records because this won't justify a business record for admission. What is the purpose?

MR. DEVORKIN: Authentication.

MR. FLEMING: The purpose of the examination is to identify documents, is that it generically?

THE COURT: I don't know why he could not ask you --

MS. CROSS: We have already agreed.

THE COURT: Why are you going through all of this?

MR. DEVORKIN: I don't think it is correct.

THE COURT: Show him the ones we are interested in where you have a question of authenticity that you want to put in and note where they disagree with you and we will take care of it. You don't have to go through fifteen minutes of this.

MR. DEVORKIN: My understanding is that they have reserved on certain documents.

THE COURT: Which ones are you interested in to get in through this witness?

MR. DEVORKIN: I am not going to introduce a document except for one or two through this witness. I simply want to make sure that the documents that will be introduced as the trial proceeds have been authenticated as documents of the corporation.

THE COURT: Which are the ones they don't agree to that you are going to use this testimony to get in?

MR. DEVORKIN: There are a number of documents which they don't agree are authentic.

THE COURT: Go show it to them now. The jury is excused. I don't need this witness for this. He is talking in the air.

In order to get authenticity you are going to have to show him each individual document to which the defendants object and we are not going to sit here all afternoon doing that.

The jury may go into the jury room.

(Jury left the courtroom)

THE COURT: I want to know the documents

that you are using this witness for to prove authenticity which the defendants do not agree are authentic.

MR. DEVORKIN: We can do that, your Honor.

MS. HYNES: We have provided the defendant with a list of documents which we have represented to them were produced by the corporations, the bulk of them in the grand jury. Some of them were produced by counsel for the corporations after the grand jury --

THE COURT: Where is that list?

MS. HYNES: I have a marked copy here and I have probably a clean copy that I can hand up to the Court. We have not completed the list. Counsel for the defendants are still checking on some of these documents and will get back. They thought they would finish it by the end of this afternoon and the bulk of the documents we have gone over and subject to some checking of the government's exhibits, actual exhibits, there may be an agreement that we can reach on this.

The point of this is that we are asking for a stipulation that these documents are what they purport to be and that they came from the company.

THE COURT: That isn't sufficient for authenticity.

MS. HYNES: This is just the first step. We are not at this point offering the documents. We have to take it step by step.

THE COURT: I know that. I thought those, steps were taken two weeks ago. I don't need this man on the stand to run off for fifteen minutes and from what I have heard so far your position that you have now authenticat the documents.

MS. HYNES: I agree that we provided the defendants with the trial exhibit brief and identified documents which we said came from the corporation.

Ms. Thompson then asked me to provide her with additional lists of documents that we said were produced by the corporation. We endeavored to do that.

We got this next list together and we gave them that list. So we have been trying in giving them whatever they request and we are now waiting for them to come back and tell us and they have told us most of it --

THE COURT: Let's go through them. 42.

MS. CROSS: We spent most of the lunch hour going through this list. This was given to us yesterday. Ms. Dacey checked these last night, over last night. We went through a large number of them with Ms. Hynes over lunch and agreed that we would agree that AMREP Corporation or one of its subsidiaries produced these documents.

There were a few where Ms. Dacey had to look at the government's copy. We broke a half hour for lunch at the government's request and didn't get to look at those last copies of those documents.

THE COURT: Is that all? Have you made up your mind what is okay on this list?

MS. CROSS: We have some we still have to check.

THE COURT: What are the ones you have agreed to?

MS. THOMPSON: One thing which complicates the list is that the government has included on the list exhibits as when they wrote their trial brief and pretrial conference they said they did not intend to offer in evidence. This is a complete list of documents they prepared prior to the trial.

THE COURT: Let's go through with it one by one. Let's not have talk.

42, in or out?

MS. CROSS: Company produced.

THE COURT: There is no authenticity problem on 42, right?

MS. CROSS: We were asked to agree that the company produced these.

THE COURT: That is not what I am interested in. I am interested in authenticity.

MS. CROSS: That is what we discussed, whether the company produced them with her over lunch.

THE COURT: She now wants to prove authenticity

MS. CROSS: As far as we got with the government was whether or not the company had produced the document and that is what we understood they were calling Mr. Schreier and Mr. Waldman for this afternoon.

THE COURT: Is that true, Mr. Devorkin? You were only putting this witness on the stand to indicate that he produced these documents -- which I have marked in my own handwriting as being produced, furnished to the government for me today, given by defendants to the government last evening -- only to show that these documents came from the defendants' files?

MR. DEVORKIN: That is not correct.

THE COURT: What is the next point, authenticit

MR. DEVORKIN: Yes, your Honor.

THE COURT: Ms. Cross, he says authenticity also. We have been talking about authenticity two weeks ago. I thought I was getting from you, after I indicated in some areas what my ruling would be, an agreement as to what is authentic or not.

For example, you were reserving the authenticit of a letter, an original letter in the defendants' files sent to them by their correspondent in California and I said that was ridiculous. We are not going to spend all our time going over that nuts and bolts stuff.

42 you say you have not prepared on authenticit for any of these?

MS. CROSS: No, because I don't know now what any one of these documents individually are with a few exceptions.

THE COURT: You have had this list of documents since September 7th.

MS. CROSS: This list I have had since last night.

THE COURT: But they include the numbers that you have had since September 7th and you should have gone over all of them before we even had our pretrial conference.

MS. CROSS: We did.

THE COURT: What are you talking about then? Don't tell me this is brand new to you.

MS. CROSS: We went over them and as we stated in our brief to your Honor we raised an authenticity objection to all the documents to be renewed or not at trial depending on what the testimony showed.

THE COURT: All right. Now, we are now two weeks after you made that statement. You have read all these documents, you know them well?

MS. CROSS: I don't know them by number.

THE COURT: You should.

MS. CROSS: By number?

THE COURT: You should have an index of them.

MS. CROSS: We have an index.

THE COURT: Then you should be able to know what each one was. We went through this two weeks ago pulling out document after document after document and you said you didn't know what they were all about.

You went through them then. Now we go through them a third time? These are the numbers. You are supposed to know what they represent because you have had them in your possession since September 7th.

MS. CROSS: I don't know what each number is. I have not memorized 1700 documents by number, your Honor.

THE COURT: If you had an objection you should have had a list of what you were objecting to.

MS. CROSS: We objected in our brief.

THE COURT: I know that and we went over your brief objections.

MS. CROSS: Only part of them.

THE COURT: I gave an indication of how I was going to rule.

MS. CROSS: Yes.

THE COURT: From that you should know what you can admit should come in and those you were going to still fight on. Two weeks have gone by since I made that ruling.

MS. CROSS: If I look at each one of these documents we can do it

THE COURT: You should have done it before now. That is what I am saying.

MR. FLEMING I guess I started all of this. The objection I was making is I didn't see what Mr. Schreier was adding to authenticity other than to testify that documents were produced.

THE COURT: I agree with you. That is why I stopped it all. Let's get the authentic ones in and those you are fighting on let's rule on but don't tell me after two months you don't know out of this list what you are fighting about or not. This I cannot believe from seven competent lawyers.

MR. FLEMING: Don't ask me that question.

THE COURT: You are involved, I am sorry.

MR. FLEMING: I understand. What I am saying is two things.

One, I don't see -- apparently there has been substantial agreements that documents were produced from the company which is Mr. Schreier's only purpose of testimony apparently.

The second purpose is the way the examination is proceeding, it sounds like an omnibus examination instead of authenticity.

I would like to know what Mr. Devorkin intends to prove through this witness as to authenticity.

MR. DEVORKIN: Our position has been this all along: Since we filed our brief on authenticity and admissibility of documents. That is that documents such as internal corporate documents, internal corporate memos, letters from the companies, from the company's agents and so forth, if they are found in the company's files should be considered authentic. They should be considered as what they are, what they purport to be.

We thought that absent a stipulation as to that that to convince your Honor of that point factually that we would call a few witnesses like Mr. Schreier who would verify, A, that we did get these documents from the government and, B, that it was the regular practice of the company and officers such as Mr. Schreier and the defendants to generate memorandum, send them to other officers and employees, rely on those memoranda, keep those memorandum in their possession, not to establish business records because we don't think we have to do that but to establish that if these documents, as the ones I have described, are found in the corporation possession, then they are authentic.

THE COURT: It does not necessarily follow. There you are wrong and I have indicated to you two weeks ago that you were wrong on that theory.

MR. DEVORKIN: Your Honor indicated for example that when we had a memo produced by the company --

THE COURT: Wait a second. I indicated clearly that merely saying you found it in the corporate files did not find authenticity. I made that ruling flat.

MR. DEVORKIN: I agree.

THE COURT: Now you are giving me the same argument again. You said just now they were found in the company's files, therefore they are authentic.

That is exactly what you said.

MR. DEVORKIN: What I am saying -- and that is why we are calling Mr. Schreier, and three secretaries to the individual defendants.

Our point is that if you have a memo styled from Chester Carity to Dan Friedman, cc to other company employees or officers, and those people can be identified and it is about the affairs of the corporate defendant --

THE COURT: I have no problem with that. I have problem with what you claim is the rule, to wit, that anything found in the corporate files are authentic. That statement you have made on the record and if you want to have it read back to you I will have it read back to you. I will not take that statement. I told you that two weeks ago.

MR. DEVORKIN: I understand.

THE COURT: Don't give it to me again.

MR. DEVORKIN: I didn't mean to go as far as I apparently have. I agree it depends on each document. I agree wholeheartedly with your Honor on that.

Certain documents from and to third parties that have nothing to do with this case, just because they are found in the company files might not be authentic, I agree with that.

And I agree with certain documents -- well, we are in agreement on that principle. I think it depends on each document.

What we are saying to your Honor is that in the first place we do want to show certain indicia of authenticity with respect to the documents and absent --

THE COURT: I say to you I can't see why we need that testimony because I thought we had left that to agreement between you and defense counsel when the question of authenticity came up and I asked them to pick out those documents to which they had objection.

The one that stuck in my mind is the defendant's objecting to an original letter in their file from their counsel in California. I felt that was an incompetent attitude on the part of the defense and a waste ofmy time to rule on it.

Now, we are back to the list again.

MS. HYNES: We concede that we don't need Mr. Schreier if they will stipulate to authenticity and I agree they should then proceed to tell us what they don't stipulate is authentic.

MR. FLEMING: Your Honor, the only offer I have heard with regard to Mr. Schreier's testimony --

THE COURT: Forget Mr. Schreier, Mr. Fleming. We are past Mr. Schreier. He is sitting here, he is enjoying all this. The jury is having a smoke.

I want the defendant's position on every one of these which should be at your fingertips because it was brought to a head two weeks ago and by now you should know the answers.

MR. FLEMING: As I understand there are two questions. The first one is whether the documents produced from the company. As I understand it, there was virtual agreement with regard to all documents on that question. That was the purpose, as I understood it, of Mr. Schreier's testimony.

THE COURT: We are past Mr. Schreier. We are now on authenticity, something that you should know now.

All right, Mr. Arkin, yes or no? I am going to rule them in or out right now because you are supposed to know it. I can't wait any more for you in the middle of trial.

MR. ARKIN: I understand that. I do not know by heart all 1700 documents either. My understanding was that was what was produced by the corporation and what was not.

THE COURT: You will find in the transcript two weeks ago that I asked you to sit down on the question of authenticity.

Obviously you didn't do it.

MR. ARKIN: I personally was not in those conferences.

THE COURT: I don't want that excuse, Mr. Arkin.

MR. ARKIN: Excuse me, I didn't mean to suggest, your Honor, that I wasn't responsible.

THE COURT: I put that burden on defense counsel two weeks ago and we are now in the middle of the trial and you tell me, oh, we got a list, but we didn't think it was that.

MR. ARKIN: Your Honor, I will say now that there is no agreement on authenticity at the present time and we are not prepared at the present time to stipulate to authenticity.

THE COURT: Then bring every exhibit out. Tell the jury they can go home for the day.

I expect a higher degree of competence from defense counsel especially when they were put on notice two weeks ago after what had to be done before the trial started.

You are excused, Mr. Schreier.

(Witness left the courtroom.)

MR. GLENDON: Your Honor, since Mr. Schreier's testimony seems to be a non-event, I would ask to move to strike the references in Mr. Schreier's testimony to Mr. Friend because I think it may be prejudicial.

THE COURT: No, I will not grant that.

MR. DEVORKIN: When we convene in front of the jury again, I wqll have one or two questions for Mr. Schreier about something else but that's all.

THE COURT: All right, Mr. Arkin, let's go. Exhibit 42.

MR. ARKIN: With respect to Exhibit 42, Economic Population and Housing Characteristics document, dated January, 1968, from Kerschner Associates. That's a document obviously created by somebody else, not created by the corporation. While it may have been in the corporation's files, I don't see how we can attest to its authenticity.

THE COURT: Let me look at it.

MS. HYNES: There is a stipulation that it was produced by the corporation.

THE COURT: That doesn't mean anything, Ms. Hynes.

MS. HYNES: I am just making a record.

THE COURT: You don't have to make a record. You produced the list. Let's not make it repetitive. I have made it perfectly clear that the fact that it comes from their files does not mean it is authentic.

I even made the point a couple of weeks ago that even in the collection of a library that all information coming into their records does not mean it is authentic for your production against them. I made that clear so why make the comment you just did.

MR. ARKIN: Your Honor, I can shorten this somewhat. All the way through Exhibit 63, which are the first nine exhibits, are all documents created or generated by some other organization or agency. While they were in our files, if we conceded that, they certainly were not our product. As a result I don't see how we can stipulate to authenticity.

THE COURT: I gather that this Albuquerque population material is going to be proved through a witness. That's what I was told.

MR. KAUFMAN: Your Honor, some of it will be proved through a witness. Some of these reports through '66 will be offered only for the information that the defendants were put on notice of and I believe your Honor has previously ruled that what we have been calling -- these documents that were in the company files that we are not producing a witness for can come in not for the truth of the matter asserted, but for the information that was imparted to the company and this is one of those documents. To the extent that there is information --

THE COURT: Are you putting a witness on regarding Exhibit 42?

MR. KAUFMAN: If that is the Kerschner report, I do not believe so. We are offering that simply by virture of the fact that it was in the company file and there are statements in that report that they were in possession of which contradict the representations they were making.

THE COURT: This doesn't mean that it was adopted by the Albuquerque Planning Department, does it?

MR. KAUFMAN: We are not claiming that, your Honor.

THE COURT: Objection sustained to 42.

45.

MR. ARKIN: The same kind of objection to that, your Honor. It was not anything produced or generated by the company. It was in our files. We produced it in response to a subpoena but that's as far as it goes.

THE COURT: Let's see it. This is something prepared by a bank, the First New Mexico Bank Share Corporation. Who are they?

MR. ARKIN: That's a bank in New Mexico, your Honor.

THE COURT: Objection sustained.

MR. KAUFMAN: Your Honor, we would then have to notify all concerned that, if necessary, we are going to have to call a witness to authenticate each document.

THE COURT: It is all right with me. You indicated to me two weeks ago that I thought you were going to bring witnesses in on these. In fact, I think I also made comment on these bank reports, I don't know if it was this one, but someone told me about a bank report and I said it was out. What do we put it in again for?

MR. KAUFMAN: This is another one, your Honor.

THE COURT: 46.

MR. ARKIN: 46 is entitled New Mexico Progress, Volume 37, number 2. Again, your Honor, no something generated or produced by us. It was produced by the Albuquerque National Bank. It is a quarterly publication.

MR. KAUFMAN: The same ruling will apply, your Honor.

MR. ARKIN: Number 47 is a factual digest of AIDS and IFA, which are some kind of civic organizations in Albuquerque, as I understand it, your Honor.

THE COURT: Let me see it.

Who is Albuquerque Industrial Development Service, Mr. Kaufman?

MR. KAUFMAN: Your Honor, I think it is a Chamber of Commerce type organization, something to that effect in Albuquerque.

MR. ARKIN: It is not our organization. It is an independent organization in Albuquerque.

THE COURT: The mere fact that it is not your organization doesn't automatically keep it out.

MR. ARKIN: We were not responsible for the creation of this document, your Honor.

THE COURT: If the document is produced say from the Albuquerque City Planning Commission, I would take a different view of it even though you had nothing to do with producing it than if it were produced by a bank.

MR. ARKIN: If your Honor please, this is not the Albuquerque Planning Board. It is not an official body.

THE COURT: I know that. I am answering the argument you gave me.

MR. ARKIN: Let me respond to your Honor's critique or comment on my argument by saying that the fact that even an official document say by the Albuquerque Planning Board was within the files of the corporation does not bring knowledge home to any particular person at AMREP. The point being the fact it was in some file cabinet on some shelf or desk does not prove anything.

THE COURT: I think I made a statement during those two weeks of pre-trial that if there was a document put out by an official body, I don't mean a bank or some Chamber of Commerce, but the Albuquerque Planning Commission, and you are in the business of selling land, that's your business, and when a document is put out by an official body having something to do with the very business you are in, I think that maybe you should be held for its knowledge if it is found in your files.

MR. ARKIN: May I suggest to your Honor that where you have seven individual defendants, for example, one who has not been in the company for seven years, one who came to the company ten years after inception, one who has not been active for five years, another one who has not been active for six years --

THE COURT: If he is found to have joined the scheme, he is in, my friend.

MR. ARKIN: Your Honor, that's a very important observation your Honor has made and I am in the unfortunate position of disagreeing with it because I believe that imputation of a declaration is a very different thing than imputation of knowledge. We cited to your Honor --

THE COURT: Wait, you are getting things mixed up. The word "knowledge" is used "knowingly joined the scheme knowing of its purpose."

MR. ARKIN: Yes.

THE COURT: What's where it ends, the word "knowledge."

I don't understand that the information that the schemers had before X joined, which allowed them to devise the scheme, is in against the fellow who joined it.

MR. ARKIN: Your Honor, I know that you don't want any more memoranda and I don't want to write any more --

THE COURT: I am not going to take any more.

MR. ARKIN: Wonderful. That suits me too right now. I must say to you that there is a difference, as I understand it, between a declaration with which a co-conspirator or co-schemer might be charged, attributed to him, but where it is a question of whether a particular document came to the attention of one alleged co-schemer, it seems to me that's a different kind of a thing.

THE COURT: I don't see the difference. Supposing I am a narcotic runner and I found out coming up through lower Chesapeake Bay is a good way to bring the stuff in. I know and you join the scheme six months later to sell the stuff.

Do you have to know how the stuff is coming in --

MR. ARKIN: No --

THE COURT: -- as long as your people found out the way to do it?

MR. ARKIN: Your Honor, I am glad you asked that question. I really am because, no, you would not have to know to be charged with the scheme, but the particular item of knowledge which goes to prove whether or not you are in the scheme and whether or not you are carrying out the scheme would not be attributable to you. They would have to prove you guilty of that conspiracy by other evidence Aliunde of that particular independently of other evidence.

THE COURT: You don't have to explain it to Ed Odette, he knows the language better than you do.

MR. ARKIN: I didn't mean to offend him.

Your Honor, it seems to me in the Chesapeake Bay hypothetical there the fact of Chesapeake having a deep harbor and boats can go through with whatever they are filled with, that knowledge would not be imputed to any co-conspirator. The conspiracy itself he may be charged with for other acts or declarations made by that co-conspirator, but the item of knowledge, that itself is not attributable to any other co-schemer. There is a very different standard and different rule. The rule of

Rec'd. 5/5/77
M. Rothenberg
appellate Sect.